

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

AND THE

STATE OF OREGON

AND THE

STATE OF WASHINGTON

AND THE

UNITED STATES ARMY CORPS OF ENGINEERS

IN THE MATTER OF:

U.S. Department of the Army
U.S. Army Corps of Engineers
Bradford Island, Columbia River
Oregon and Washington

FEDERAL FACILITY AGREEMENT
under CERCLA Section 120

Administrative
Docket Number: CERCLA-10-2022-_____

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Based on the information available to the Parties on the Effective Date of this FEDERAL FACILITY AGREEMENT (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

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I. JURISDICTION

Each Party is entering into this Agreement pursuant to the following authorities:

1.1 The U.S. Environmental Protection Agency (EPA) Region 10 enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study (RI/FS) pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499 (hereinafter jointly referred to as CERCLA), and Sections 6001, 3008(h) and 3004(u) and (v) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580.

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1.2 EPA Region 10 enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), and Executive Order 12580.

1.3 The U.S. Army Corps of Engineers (USACE) enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. Section 9620(e)(1), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. Section 4321, and the Defense Environmental Restoration Program (DERP), 10 U.S.C. Section 2701 *et seq.*

1.4 USACE enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. Section 9620(e)(2), RCRA Sections 6001, 3008(h), 3004(u) and (v), 42 U.S.C. Sections 6961, 6928(h), 6924(u) and (v), Executive Order 12580 and the DERP.

1.5 The Oregon Department of Environmental Quality (ODEQ) enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Section 6926, and Oregon Revised Statutes Sections (ORS) 466.005 through 466.225 and 466.~~990880~~ of the state hazardous waste law; and ORS ~~4656.200~~ through ~~465.455~~~~466.540~~ through ~~466.590~~ and ~~4656466~~.900 of the state superfund statute.

1.6 The Washington Department of Ecology (WDOE) enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. Sections 9620(f) and 9621(f), Section 3006 of RCRA, 42 U.S.C. Section 6926, and Revised Code of Washington (RCW) Chapters 43.21A (Department of Ecology), 70A.300 (Washington State Dangerous Waste Management), and 70A.305 (Washington State Model Toxics Control Act)~~Titles 70 and 43 of the Revised Code of Washington (RCW).~~

II. DEFINITIONS

Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) shall control the meaning of terms used in this Agreement.

2.1 “Accelerated Operable Unit” or “AOU” shall mean a remedial action, which prevents, controls, or responds to a release or threatened release of hazardous substances, pollutants, and contaminants where prompt action is necessary, but a response under removal authorities is not appropriate or desirable. The purpose of an AOU is to allow the Parties to proceed with a remedial action for that Operable Unit prior to completion of the final Record of Decision (ROD) for the total remedial action. AOUs are particularly appropriate where the size and complexity of the total remedial action would seriously delay implementation of independent parts of the action. AOUs will only proceed after complying with applicable procedures in the NCP, and the

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Parties shall make every effort to expedite these procedures. It is not intended that AOUs diminish the requirements for or delay the conduct of a total remedial action.

2.2 “Agreement” shall refer to this document and shall include all Appendices to this document. All such Appendices are integral parts of this Agreement and shall be enforceable to the extent provided herein.

2.3 “Applicable State law” shall mean all state of Oregon laws administered by ODEQ and state of Washington laws administered by the ~~Washington Department of Ecology~~ WDOE determined to be applicable under this Agreement. The term shall include all State laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs).

2.4 “Applicable or Relevant and Appropriate Requirements” or “ARARs” shall mean “legally applicable” or “relevant and appropriate” requirements, standards, criteria or limitations, as those terms are used in Section 121 of CERCLA, 42 U.S.C. Section 9621, and as defined in the NCP.

2.5 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, (SARA) Public Law No. 99-499, and any amendments thereto.

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2.6 “Community Relations” shall mean the program to inform and involve the public in the installation restoration, CERCLA and RCRA processes and to respond to community concerns.

2.7 “Days” shall mean calendar days, unless business days are specified. Any submittal, written statement of position, or written statement of dispute, which, under the terms of this Agreement, would be due on a Saturday, Sunday, Federal or ~~State~~ Commonwealth holiday shall be due on the following business day.

2.8 “Deadlines” shall mean the Near-Term Milestones specifically established for the current fiscal year under the Site Management Plan. Deadlines are subject to stipulated penalties in accordance with Section XXI – STIPULATED PENALTIES.

2.9 “Deliverable Documents” shall mean those required documents listed as Primary and Secondary Documents under this Agreement.

2.10 “Documents” or “records” shall mean any documents, writings, correspondence, and all other tangible things on which information has been stored that relates to this Agreement or to any activities to be undertaken relating to this Agreement.

2.11 “EPA” or “U.S. EPA” or “Agency” shall mean the United States Environmental Protection Agency, its employees, agents, authorized representatives, successors, and assigns.

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2.12 “Facility” shall mean that property owned by the United States and operated by the U.S. Army Corps of Engineers, including that portion known as Bradford Island within the Columbia River and the State of Oregon, and including all areas identified in Appendices A through E. This definition is for the purpose of describing a geographical area and not a governmental entity.

2.13 “Fiscal year” shall mean the time-period used by the United States Government for budget management and commences on October 1 and ends on September 30 of the following calendar year.

2.14 “Focused Feasibility Study” or “FFS” shall mean a comparison of alternatives, which concentrates on a particular contaminated medium or a discrete portion of the Site that does not need added investigation in order to progress forward in the remedial process.

2.15 “Bradford Island” shall mean Bradford Island located within the Columbia River and the state of Oregon.

2.16 “Guidance” shall mean any requirements or policy directives issued by EPA or the states of Oregon or Washington that are of general application to environmental matters and which are otherwise applicable to the USACE’s work under this Agreement.

2.17 “Interim Remedial Action” shall mean all discrete Remedial Actions, including, but not limited to, Accelerated Operable Units (AOUs), implemented prior to a final Remedial Action that are taken to prevent or minimize the release of hazardous substances, pollutants, or contaminants.

2.18 “Land Use Controls” or “LUCs” shall mean any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.

2.19 “Milestones” shall mean the dates established by the Parties in the Site Management Plan for the initiation or completion of Primary Actions and the submission of Primary Documents and Project End Dates. Milestones shall include Near Term Milestones, Out Year Milestones, Primary Actions, and Project End Dates.

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2.20 “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, and any amendment thereto.

2.21 “Near Term Milestones” shall mean the Milestones within the current fiscal year (FY), the next fiscal year or “budget year” (FY+1), and the year for which the budget is being developed or “planning year” (FY+2).

2.22 “On-site” shall have the meaning as defined in the NCP.

2.23 “Operable Unit” or “OU” shall mean a discrete action that comprises an incremental step toward comprehensively remediating the Site. This discrete portion of a remedial response

manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure related to the Site. Operable Units may address geographical portions of the Site, specific Site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of the Site. The cleanup of the Site can be divided into a number of Operable Units, depending on the complexity of the problems associated with the Site. The term “Operable Unit” is not intended to refer to the term “operating unit” as used in RCRA. All Operable Units shall be addressed in accordance with the NCP, EPA Guidance and the requirements of CERCLA.

2.24 “Out Year Milestones” shall mean the Milestones within those years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 through Project End Date).

2.25 “Parties” shall mean USACE, ODEQ, WDOE, and EPA.

2.26 “Primary Actions” as used in these definitions shall mean those specified major, discrete actions that the Parties identify as such in the Site Management Plan. The Parties should identify all major, discrete actions for which there are sufficient information to be confident that the date for taking such action is implementable.

2.27 “Project End Dates” shall mean the dates established by the Parties in the Site Management Plan for the completion of major portions of the cleanup or completion of the cleanup of the facility. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate with Project End Dates due to uncertainties associated with establishing such dates.

2.28 “Project Manager” shall mean each person designated by the Parties to represent that Party’s interests and manage all response actions undertaken at the Site.

2.29 “RCRA” shall mean the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984, (HSWA), Public Law No. 98-616, and any amendments thereto.

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2.30 “Record(s) of Decision” or “ROD(s)” shall be the public document(s) that select(s) and explain(s) which cleanup alternative(s) will be implemented at the Site and includes the basis for the selection of such remedy(ies). The bases include, but are not limited to, information and technical analyses generated during the RI/FS and consideration of public comments and community concerns.

2.31 “Schedule” shall mean a timetable or plan that indicates the time and sequence of events.

2.32 “Site” shall include areas within the Facility and any other areas where a hazardous substance, hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9). This definition is not intended to include hazardous substances or wastes intentionally transported from the Facility by motor vehicle.

2.33 “Site Management Plan” or “SMP” shall mean a planning document entitled “Bradford Island, Columbia River Site Management Plan,” prepared specifically under Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN, which contains timetables, plans, or Schedules that indicate the times and sequences of events. The Site Management Plan will be used as a management tool in planning, reviewing and setting priorities for all response activities at the facility. Milestones developed under the terms of this Agreement are listed in the SMP. Deadlines listed in the SMP are subject to stipulated penalties in accordance with Section XXI – STIPULATED PENALTIES.

2.34 “Solid Waste Management Unit” or “SWMU”, as defined pursuant to RCRA, shall mean any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid and/or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

2.35 “States” shall mean the states of Oregon and Washington, including all departments, offices and agencies thereof, as represented by the Oregon Department of Environmental Quality (ODEQ) and Washington Department of Ecology (WDOE).

2.36 “Target Dates” shall mean dates established for the completion and transmission of Secondary Documents. Target Dates are not subject to dispute resolution, and they are not Milestones.

2.37 “Transmit” shall mean the following: any document or notice to be transmitted by a certain date will be considered as transmitted on time if: (a) it is provided to the carrier on a next day mail basis no later than the day before it is due to be delivered according to the requirements of this Agreement; (b) it is hand-delivered by the due date; (c) it is sent by certified mail return receipt requested no later than two days before it is due to be delivered according to the requirements of this Agreement. Any other means of transmission must arrive on or before the due date to be considered as timely delivered.

2.38 “ODEQ” shall mean the state of Oregon Department of Environmental Quality and its authorized employees and authorized representatives.

2.39 “USACE” shall mean the United States Army Corps of Engineers, a division of the United States Army, including Bradford Island, their employees, members, successors and authorized representatives, and assigns. USACE shall also include the United States Department of Defense (DoD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

2.40 “WDOE” shall mean the Washington Department of Ecology and its authorized employees and authorized representatives.

2.41 “Work” shall mean all activities USACE is required to perform under this Agreement, except those required by Section XXXI – RECORD PRESERVATION.

III. PARTIES BOUND

3.1 This Agreement shall apply to and be binding upon EPA and USACE. Under this Agreement, the states of Oregon and Washington are acting pursuant to their power and duties under Section 120(f) and 121(f) of CERCLA, 42 U.S.C. Sections 9620(f) and 9621(f). USACE agrees to include the notices required by Section 120(h) of CERCLA in any contract for the sale or transfer of real property affected by this Agreement. Transfer or conveyance of any interest in real property affected by this Subsection 3.1 shall not relieve USACE of its applicable obligations under this Agreement.

3.2 USACE shall notify EPA, ODEQ, and WDOE of the identity and assigned tasks of each of its contractors performing Work under this Agreement upon their selection and contract award. USACE shall provide copies of this Agreement to all contractors performing any Work called for by this Agreement. Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement.

3.3 This Section shall not be construed as an agreement to indemnify any person.

IV. PURPOSE

4.1 The general purposes of this Agreement are to:

4.1.1 Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

4.1.2 Establish a procedural framework and Schedule for developing, implementing, and monitoring appropriate response actions at the Site in accordance with CERCLA, as amended by SARA, the NCP, Superfund Guidance and policy, RCRA, RCRA Guidance and policy, and applicable State law; and

4.1.3 Facilitate cooperation, exchange of information and participation of the Parties in such actions.

4.2 Specifically, the purposes of this Agreement are to:

4.2.1 Identify interim remedial action (IRA) alternatives, which are appropriate at the Site prior to the implementation of final remedial actions(s) for the Site. The IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRAs to EPA, ODEQ, and WDOE pursuant to CERCLA and applicable State law. This process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRAs.

4.2.2 Establish requirements for the performance of a RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a FS for the Site to identify, evaluate and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA and applicable State law.

4.2.3 Identify the nature, objective, and Schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and applicable State law.

4.2.4 Implement the selected interim remedial and final remedial action(s) in accordance with CERCLA and applicable State law and meet the requirements of CERCLA Section 120(e)(2) for an interagency agreement among the Parties.

4.2.5 Ensure compliance, through this Agreement, with RCRA and other applicable Oregon and Washington hazardous waste laws and regulations for matters covered herein.

4.2.6 Coordinate response actions at the Site with the mission and support activities at Bradford Island.

4.2.7 Expedite the cleanup process to the extent consistent with protection of human health and the environment.

4.2.8 Provide for ODEQ and WDOE involvement in the initiation, development, selection, and enforcement of remedial actions to be undertaken at Bradford Island, including the review of all applicable data as it becomes available, and the development of studies, reports, and action plans; and to identify and integrate state of Oregon and state of Washington ARARs into the remedial action process.

4.2.9 Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

V. SCOPE OF AGREEMENT

5.1 This Agreement is entered into by the Parties to enable USACE to meet the provisions of CERCLA, 42 U.S.C. Section 9601 et seq., and RCRA Sections 3004(u) and (v) and 3008(h), as amended, 42 U.S.C. Sections 6924(u) and (v) and 6928(h).

5.2 This Agreement is intended to cover the investigation, development, selection, and implementation of response actions for releases or threatened releases of hazardous substances, contaminants, hazardous wastes, hazardous constituents, or pollutants at or from the Site. This

Agreement covers all phases of remediation for these releases, bringing together into one agreement the requirements for remediation as well as the system the Parties will use to determine and accomplish remediation, ensuring the necessary and proper level of participation by each Party. Although all such releases at the Site are not currently known, the Agreement establishes the system for dealing with those undiscovered releases. To accomplish remediation of those undiscovered releases, the Parties will establish Schedules and Deadlines as necessary and as information becomes available and, if required, amend this Agreement as needed.

5.3 This Agreement is intended to address and satisfy any of Bradford Island's RCRA corrective action obligations, which relate to the release(s) of hazardous substances, hazardous wastes, hazardous constituents, pollutants, or contaminants at or from all areas addressed under future corrective action permits. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits, and is not intended to affect the treatment, storage, or disposal at Bradford Island of hazardous wastes. This Agreement is not intended to encompass response to spills of hazardous substances from ongoing operations unless those spills occur in conjunction with CERCLA removal actions or remedial actions pursuant to this Agreement.

5.4 The scope of this Agreement extends to the entire Site, as listed in the Federal Register proposing the Site for the National Priorities List (NPL) and as provided for in this Agreement. A release at the Site cannot be deleted from the NPL unless it is determined, in accordance with CERCLA, the NCP, and this Agreement, that USACE has implemented all appropriate response actions for such release, and that the release at the Site no longer poses a threat to human health or the environment. All response actions at the Site shall occur in discrete locations termed ~~MRP Sites or~~ Operable Units (OUs) identified at the Site pursuant to this Agreement.

5.5 Any response action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

5.6 The Parties agree to expedite the initiation of response actions at the Site, including Accelerated Operable Units (AOUs) and interim response actions, and to carry out all activities under this Agreement so as to protect the public health, welfare and the environment. Upon request, the Parties agree to provide applicable Guidance or reasonable assistance in obtaining such Guidance relevant to the implementation of this Agreement.

VI. FINDINGS OF FACT

6.1 For purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. Nothing contained in this Agreement shall constitute an admission of any liability by USACE for any matters contained herein nor shall anything in this Agreement constitute an admission by USACE with respect to any finding of fact or any legal determination noted herein.

6.2 Bradford Island is part of the Bonneville Dam complex that is located within the Columbia River approximately 40 miles east of the cities of Portland, Oregon and Vancouver, Washington. Bonneville Dam is at the upper limit of tidal influence from the Pacific Ocean about 145 miles from the mouth of the Columbia River, and is situated at 45° 38' 27" N - 121° 56' 31" W. The states of Washington and Oregon border opposite sides of the Columbia River.

6.3 The Columbia River at Bonneville Dam is divided into three channels by Bradford Island and Cascade Island. A third island, Robins Island, located between the Oregon shore and Bradford Island, serves as the southern terminus for the first powerhouse of Bonneville Dam, and is an island by virtue of the navigation channel (second lock) excavated between the Oregon shore and what is now Robins Island. The tailrace for the first powerhouse forms one channel, the spillway forms the middle channel, and the tailrace channel for the second powerhouse forms the third channel. The spillway, consisting of 18 gates, spans the middle channel, between Bradford and Cascade Islands. The spill gates are raised to allow excess river flow not used for power generation to pass. The spillway is generally open between the months of April to September. During the fall and winter months (October to April) the spillway is closed, with only limited flow passing through the spillway gates.

6.4 The authorized federal navigation channel in the Bonneville Dam reach of the Columbia River is 300 feet wide and 27 feet deep, although the depth is currently maintained at 17 feet. Limited dredging is necessary to keep the channel to the maintained depth near Bonneville Dam. Bathymetric surveys conducted by USACE indicate that the pool near Bonneville Dam (within the spillway forebay) is up to 100 feet deep. Water flow around the island is controlled by the operation of the spillway. When the spillway is open, approximately April to September, the water flow around Bradford Island is in a downstream direction. However, when the spillway is closed (approx. Sept to April), water flow is reversed in an upstream direction around the tip of Bradford Island.

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6.5 USACE maintains and administers a Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) point source discharge permit for discharges from the Bonneville Dam wastewater treatment plant. The plant services all sanitary waste facilities at Bonneville Dam. Discharges from the Bonneville fish hatchery are not treated by this plant but have a separate discharge in Tanner Creek, a tributary to the Columbia River, managed by the state of Oregon Department of Fish and Wildlife.

6.6 The major working features on Bradford Island currently include a visitor center, fish ladders, a service center building, and an equipment building. A sandblast building previously located on Bradford Island was structurally damaged in a storm and demolished by USACE in 2012. The average annual precipitation at the Site is 77.05 inches and may be a contributing factor to contamination from Bradford Island reaching the Columbia River through surface runoff and groundwater discharges.

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6.7 Historical uses of Bradford Island have included a target shooting range, miscellaneous waste landfill, sandblast operation and sandblast grit disposal area, and bulb disposal area. There was also a period when electrical equipment was disposed of directly into the Columbia River off the north end of Bradford Island in three distinct locations. The electrical equipment was

comprised of light ballasts, electrical insulators, lightning arresters, electrical switches, rocker switches, a breaker box, and electrical capacitors.

6.8 Beginning in 1997, USACE has undertaken a series of environmental investigations of Bradford Island. USACE initially conducted this work as part of the ODEQ voluntary cleanup program but in 2004 USACE elected to continue the work pursuant to CERCLA and the USACE Engineering Regulation 200-2-3, *Environmental Compliance Policies*. ODEQ and the Yakama Nation, a federally recognized Indian tribe, have maintained varying levels of oversight of the USACE investigations.

6.9 For purpose of the environmental investigations, USACE has divided the Site into two operable units (OUs) consisting of the land-based Upland OU and the in-water (sediment and water-based) River OU. The Upland OU is located entirely within the state of Oregon, while the River OU has areas within the state of Oregon and state of Washington. USACE further identified four “areas of potential concern” (AOPC) within the Upland OU, including the target shooting range (Pistol Range) AOPC, miscellaneous waste landfill (Landfill) AOPC, sandblast operation and sandblast grit disposal area (Sandblast) AOPC, and bulb disposal area (Bulb Slope) AOPC.

6.10 The electrical equipment and debris that had been discarded into the Columbia River off the north shore of Bradford Island was excavated by USACE in 2000 and 2002 and disposed of in an offsite location. The sediments in this area of the River OU were found to be contaminated with polychlorinated biphenyls (PCBs), polynuclear aromatic hydrocarbons (PAHs), and metals. In 2007, USACE dredged contaminated sediments from this area and disposed of the sediments at an offsite licensed hazardous waste landfill. Despite this efforts, sediment in this area remains contaminated by total petroleum hydrocarbons, (TPH), PAHs, dibenzofuran, carbazole, metals (including mercury), tributyltin and dibutyltin, organochlorine pesticides, phthalates, bis(2-ethylhexyl)phthalate, chrysene, and PCBs as demonstrated by sampling directly around Bradford Island of sediment, clam and smallmouth bass tissue collected in 2011.bis(2-ethylhexyl)phthalate, chrysene, and PCBs.

6.11 The Landfill AOPC is a former waste disposal area at the northeastern end of Bradford Island that was used from the early 1940s until the early 1980s. Waste disposed of in the 1.36~~half~~-acre Landfill AOPC included: household materials, project-related materials (grease, light bulbs, sandblast grit), PCB containing electrical equipment (50 ballasts) including transformers, Inerteen capacitors, lighting arresters, light ballasts and electrical debris, ~~light ballasts~~, broken glass, rubber tires, metal debris, wood debris, metal cables, asbestos containing building materials, burned debris, ceramic insulators, and mercury vapor lamps. Pesticide/herbicide mixing and rinsing of pesticide/herbicide application equipment also occurred ~~in near~~ the Landfill AOPC. By 1982, the surface of the Landfill AOPC had been capped with soil, and another layer of soil cover was added in 1989. The volume of landfilled material is estimated to be between 7,500 cubic yards (cy) and 9,900 cy, with a maximum depth of 15 feet below ground surface (bgs). Although the Landfill AOPC is relatively flat and well-vegetated, its northern location abutting the Columbia River presents the possibly of surface water and groundwater contamination runoff from the Landfill AOPC to the river. A 2001 geotechnical report identified mass wasting from the Landfill APOC as an

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important concern. Significant slope reduction was recommended for slope stability. Based on this report and discussion with DEQ around the 2016 FS, USACE agreed to remove the entire landfill.

6.12 The sampling of surface soils at 0 to ~~3-10~~ feet bgs since 1999 has revealed that disposal and handling practices at the Landfill AOPC have impacted surface and subsurface soils with contamination that includes: the volatile organic compounds (VOCs) tetrachloroethene (PCE) and toluene; the semivolatile organic compounds (SVOCs) acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, bis(2-ethylhexyl)phthalate, chrysene, dibenz(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, naphthalene, phenanthrene, and pyrene; total petroleum hydrocarbons (TPH); including diesel and residual range; the metals antimony, arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, and zinc; polychlorinated biphenyls (PCBs); and the pesticides and ~~herbicides 2,4,5-T, dichloroprop, MCP, and 4,4'-DDT.~~ herbicides 2,4,5-T, dichloroprop, MCP, and 4,4'-DDT. Hot spots of lead were found. Most of the characterization of landfill soils comprises of historic test pits. While the test pitting completed did not indicate the presence of equipment in the landfill, the heterogenous nature of landfill disposal may have been inadequate to detect it. If oil-filled equipment were disposed of in the landfill, this equipment may have leaked, or may do so in the future.

6.13 The Sandblast AOPC consists of the property surrounding the former sandblast building on the eastern end of Bradford Island. A variety of equipment has historically been painted with materials that contained metallic (including lead and zinc chromate systems) and organometallic compounds, and periodically stripped with blast media and repainted in the sandblast building. The former sandblast building was used for sandblasting operations and painting from approximately 1958 to 1988. Spent sandblast grit was disposed of in and around the sandblast building, and in an area east of the former sandblast building prior to 1994.

Stormwater runoff from impervious ~~and pervious surfaces~~ surface in the Sandblast AOC drains to four catch basins that discharge to the Columbia River through two outfalls. These discharges could carry contamination from the Sandblast AOPC to the Columbia River. The majority of runoff from asphalt immediately southeast of the former sandblast building is not captured by the stormwater system and instead flows overland and discharges onto a short, steep, forested hill slope to the north toward the Columbia River. Eroded soil from the water flow on the hill slope combined with sandblast grit from further upslope has been observed accumulated at the base of the slope and behind one of the two concert curbs that run along the base of the slope at the equipment laydown area (RI, 2012). ~~to the north toward the Columbia River.~~ It is not clear whether this stormwater reaches the Columbia River, but if so, it may also carry contamination to the river.

6.14 The Sandblast AOPC has been divided into the following ~~five~~ six source areas:

- (a) Former disposal area for spent sandblast blast grit, which also contained aboveground storage tanks;
- (b) Former transformer maintenance and disassembly area east of the former sandblast building;
- (c) Former Hazardous Material Storage Area (HMSA) located east of the equipment

building;

- (d) An area of ~~possible~~-tetrachloroethylene (PCE) release from an aboveground storage tank (AST) historically located in the vicinity of the current HMSA; ~~and~~
- (e) Laydown area used for current storage of industrial equipment and materials located along the north and south sides of the Landfill AOPC access road; ~~and~~
- (f) Former drum storage area.

6.14.1 The former sand blast grit disposal area was used for an unknown period prior to 1994. Based on data soil and catch basis data collected from 2002 and 2004, it appears that sand blast activities in this area resulted in the release to soils of metals that include arsenic, chromium, copper, lead, nickel, and zinc, and buytlins that include dibutyltin, monobutyltin, and tributyltin.

6.14.2. In November 1998, PCB-containing transformers were disassembled in a paved parking area at the former transformer maintenance area. Approximately 1 quart of PCB-containing oil was spilled in this area at that time.

6.14.3 Prior to 1993/1994, hazardous waste generated at the Bonneville Dam complex was stored at the former HMSA, which does not have a secondary containment system or berms. Historical waste handling has resulted in the release to soil of metals that include antimony, cadmium, chromium, lead, nickel, and zinc, pesticides that include (4,4'-DDT, endrin aldehyde, and endrin ketone), SVOCs that include bis(2-ethylhexyl)phthalate and dibenzofuran, and TPH.

6.14.4 The AST formerly in the vicinity of the HMSA had a capacity of approximately 300 gallons. The presence of several VOCs, including PCE, in soil, ground water, and soil gas in this area suggest that there was an historical release of liquid from the AST.

6.14.5 USACE stores industrial equipment in the laydown area along the northern and southern borders of the Landfill AOPC. The soil in the equipment laydown storage area is contaminated by metals that include antimony, arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, and zinc, pesticides that include 4,4'-DDT, endrin, endrin aldehyde, and endrin ketone, PCBs, SVOCs that include benzo(a)pyrene, benzo(b)fluoranthene, dibenz(a,h)anthracene, bis(2-ethylhexyl)phthalate, and dibenzofuran, and TPH.

6.14.6 Drums containing petroleum products and hazardous materials were formerly stored near the center of the island, east of the equipment building, prior to the construction of the hazardous material storage area.

6.14.7. The remnants of a small burn pit were located at the eastern end of the sandblast disposal area. It is bermed with wood timbers and earthen materials, and the pit contains solid waste consisting of charred wood, electrical wire, scrap metal, small electrical components, and broken glass.

6.15 The Pistol Range AOPC is located on the south side of Bradford Island and was used for small arms target practice from approximately 1950 through 1970. Surface soil in the Pistol Range AOPC is contaminated by lead and zinc. The topography of the Pistol Range AOPC consists of a sequence of vegetated slopes and flat areas. While there is currently vegetation in

the Pistol Range AOPC which may help protect against surface runoff to the Columbia River, when the Pistol Range AOPC was in use as a firing range there was likely less vegetation leading to an increased likelihood of erosion and transport of soil and associated contamination from the Pistol Range AOPC to the Columbia River.

6.16 The Bulb Slope AOPC was identified during the removal of equipment offshore of Bradford Island in February and March of 2002. The Bulb Slope AOPC consists of a fan-shaped accumulation of glass and electrical light bulb debris that extends across approximately 1,900 square feet of steeply sloped land between the Columbia River and the Landfill AOPC access road. The slope angle is near vertical at the base of the slope for a height of approximately 4 feet above the river

6.17 Debris in the Bulb Slope AOPC is concentrated in the center of the slope and the types of glass present include internal/external light bulbs including incandescent, fluorescent, and mercury vapor lamps, light bulbs, automobile light bulbs, 1- to 1.5-inch-diameter glass tubes, clear windowpane glass, white-colored molded glass (possibly lamppost light covers), and miscellaneous glass beverage containers. Based on the analytical results of soil sampling conducted in 2002, surface soils up to one-foot ~~thick~~ overlying the Bulb Slope AOPC are contaminated by lead, mercury, and PCBs. The majority of the Bulb Slope AOPC is well vegetated, covered with vegetative debris, and exhibits no evidence of surface runoff or overland flow to the Columbia River. At the base of the Bulb Slope AOPC, however, wave erosion has resulted in mass wasting of material into the river.

6.18 USACE produced a document titled “Upland and River Operable Units~~Final~~ Remedial Investigation ~~report~~Report” for the Site in 2012 and issued a document titled “Draft Feasibility Study ~~Bradford Island Operable Unit” for the Upland OU in 2017~~a few years later. The primary contaminants of potential concern (COPCs) identified by USACE during its investigations of soil and groundwater of the Upland OU include metals, PCBs, SVOCs that include PAHs, butyltins, VOCs, pesticides, and herbicides. Investigations of the River OU show that sediments are contaminated with PCBs, PAHs, and metals, and fish and shellfish in the vicinity of the ~~site~~within are contaminated with PCBs, SVOCs, pesticides, and mercury.

6.19 The groundwater sampling for the Upland OU has shown there to be metals and a VOC at concentrations that exceed their associated maximum contaminant levels for drinking water established by EPA under the Safe Drinking Water Act, and risk-based concentrations. These analytes include concentrations of copper at up to 201 milligrams per liter (mg/L), lead at up to 78.2 mg/L, mercury at up to 0.33 mg/L, ~~and~~ tetrachloroethylene at up to 54.5 micrograms per liter (ug/L), and trichloroethene at 43.7 ug/L. For soil in the Upland OU, the sampling has shown there to be concentrations of lead at up to 3,260 micrograms per kilogram (ug/kg), PCBs at up to 2,140 micrograms per kilogram (ug/kg), the SVOCs benzo(a)anthracene, benzo(a)pyrene, and ~~BisBis~~(2-ethylhexyl)~~phthalate~~phthalate at up to 32,000, 34,000, and 260,000 ug/kg, respectively, and the VOCs tetrachloroethylene and trichloroethene at up to 9,410 ug/kg ~~420,00~~ and 6,080 ug/kg, respectively.

6.20 ~~With~~With respect to the River OU, sampling of tissue from resident fish has shown small mouth bass with PCBs at up to 183,000 ~~18,140 microgram per kilogram (ug/kg)~~ and the

SVOC bis(2-ethylhexyl)phthalate at up to 1600 ug/kg, and sculpin with PCBs at up to 1700 ug/kg. The sampling of sediments in the River OU has shown concentrations of copper at up to 13,100 mg/kg, lead at up to 121 mg/kg, mercury at up to 0.366 mg/kg, PCBs at up to 690,000 ug/kg, and the SVOCs: benzo(a)anthracene, benzo(a)pyrene, bis(2-ethylhexyl)phthalate, and pyrene at up to 1,200, 1,300, 3,800, and 2,000 ug/kg, respectively.

6.21 Small mouth bass tissue samples from the forebay of the Bonneville Dam contain elevated concentrations above background of PCBs, SVOCs that include anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, bis(2-ethylhexyl)phthalate, butyl benzyl phthalate, chrysene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and pyrene. Clam tissue samples from the forebay of the Bonneville Dam contain elevated concentrations above background of PCBs and the SVOCs acenaphthene, benzo(a)pyrene, benzo(b)fluoranthene, and pyrene. Crayfish tissue samples from the forebay contained elevated concentrations above background of antimony and the SVOCs fluoranthene and pyrene. Sculpin tissue samples from this area of the River OU contained elevated concentrations above background of PCBs and lead. In addition, bis(2-ethylhexyl)phthalate and PCBs were detected at elevated concentrations in sediment samples.

6.22 The Yakama Nation has a usual and accustomed subsistence fishery located in the River OU zone of contamination. Beginning in 2013, the states of Oregon and Washington have each issued fish consumption advisories for resident fish in an area of the Columbia River that includes the River OU, due to elevated levels of mercury and PCBs in fish tissue.

Commented [A4]: Consider discussing potential rights of other tribes.

6.23 EPA has identified the need for additional data collection and analysis to adequately characterize the nature and extent of contamination at the Site. This work is anticipated to be accomplished as part of a supplemental remedial investigation which would also include a risk assessment. A feasibility study for the River OU and revised feasibility study for the Upland OU would then be based on the complete remedial investigation and risk assessment work.

6.24 EPA completed a CERCLA Hazard Ranking System (HRS) evaluation of Bradford Island that resulted in a score of 50. Based on the HRS evaluation, and in accordance with EPA policy, on September 9, 2021, the Bradford Island Site was proposed for inclusion on the National Priorities List (NPL). The notice of proposed listing was published in the Federal Register at 86 Fed. Reg. 50515. On March 16, 2022, Bradford Island was finalized on the NPL, effective as of April 15, 2022. The notice of this rule was published in the Federal Register at 87 Fed. Reg. 14805.

6.25 A Community Relations Plan (CRP) for Bradford Island was developed by USACE in _____. The plan identified issues of community concern and described the community relations program to be implemented throughout the cleanup process at Bradford Island. Community residents, elected officials, and local environmental groups were interviewed to document their concerns on restorations issues. The CRP is a living document and has since been updated by the USACE.

6.26 The Bradford Island Administrative Record (AR) and Information Repositories (IR) were established by USACE in _____. The AR has all the guidance, correspondence and documents that will be used to make remedial action decisions for the Site. The AR is maintained at _____. The AR is also available in electronic format at _____.

VII. EPA DETERMINATIONS

7.1 The following constitutes a summary of the determinations relied upon by EPA to establish its jurisdiction and authority to enter into this Agreement. None of these determinations shall be considered admissions to any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the jurisdiction and authority of the Parties to enter into this Agreement.

7.2 The United States Army Corps of Engineers is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

7.3 Bradford Island is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9), and 10 U.S.C. Section 2701 *et seq.*, and is subject to the Defense Environmental Restoration Program.

7.4 The United States is the owner and operator of Bradford Island as defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. Sections 9601(20) and 9607(a)(1). USACE is the DoD component charged with fulfilling the obligations of the owner/operator under CERCLA at Bradford Island. With respect to Bradford Island, the Secretary of Defense has delegated to USACE the CERCLA authority vested in the Secretary by Executive Order 12580. USACE is also the “lead agency,” as defined in 40 C.F.R. § 300.5, for planning and implementing response actions under CERCLA at Bradford Island.

7.5 There has been a release or a substantial threat of a release of hazardous substances, pollutants, contaminants, hazardous wastes, or constituents at or from the Facility.

7.6 The actions provided for in this Agreement are not inconsistent with the NCP.

7.7 The actions provided for in this Agreement are necessary to protect the public health, welfare, and the environment.

7.8 This Agreement provides for the expeditious completion of all necessary response actions.

VIII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

8.1 The Parties intend to integrate USACE's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants, or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will be deemed to achieve compliance with CERCLA, 42 U.S.C. Section 9601 *et seq.*; to satisfy the corrective action requirements of RCRA Sections 3004(u) and (v), 42 U.S.C. Sections 6924(u) and (v), for a RCRA permit, and RCRA Section 3008(h), 42 U.S.C. Section 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations, to the extent required by CERCLA Section 121, 42 U.S.C. Section 9621 and applicable State law.

8.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented, and completed under this Agreement will be deemed by the Parties to be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that, with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121, 42 U.S.C. Section 9621.

8.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at the Site may require the issuance of permits under Federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to Bradford Island for ongoing hazardous waste management activities at the Site, EPA, ODEQ, and or WDOE shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

8.4 Nothing in this Agreement shall alter USACE's authority with respect to removal actions conducted pursuant to CERCLA Section 104, 42 U.S.C. Section 9604.

IX. WORK TO BE PERFORMED

9.1 The Parties recognize that background information exists and has been reviewed prior to developing the Work Plans required by this Agreement. USACE need not halt currently ongoing work but may be obligated to modify or supplement work previously done to meet the requirements of this Agreement. It is the intent of the Parties to this Agreement that work done and data generated prior to the Effective Date of this Agreement be retained and utilized as elements of the RI/FS to the maximum extent feasible.

9.2 Operable Units

9.2.1 USACE shall develop, implement, and report on Remedial Investigations and Feasibility Studies (RI/FSs) for the Operable Units listed in Appendix A and new Operable Units established under Subsection 9.2.2. If an Operable Unit is modified under Subsection 9.2.3, and RI/FS work is appropriate for the modified Operable Unit, then USACE shall develop, implement, and report on a RI/FS for the modified Operable Unit.

9.2.2 Any Party may propose that a new site within the facility be designated as an Operable Unit. The proposal must be in writing to the other Parties and must state the reasons for designating a new Operable Unit. The proposal shall be discussed by all Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal of a specific Operable Unit. If Dispute Resolution is not invoked by the Parties within thirty (30) days after completion of the Project Managers' discussion concerning the proposal, or if the need for an Operable Unit is established through Dispute Resolution, the proposed new site shall be an Operable Unit, as that term is defined in Section II – DEFINITIONS of this Agreement.

9.2.3 A Party may propose that an established Operable Unit be modified. The proposal must be in writing to the other Parties and must state the reasons for the modification. The proposal shall be discussed by the Project Managers within forty-five (45) days of the written notice. Dispute Resolution may be invoked if the Parties are not in agreement on the proposal to modify a specific Operable Unit. If Dispute Resolution is not invoked within thirty (30) days after the Project Managers' discussion concerning the modification, or if the need for modifying an Operable Unit is established through Dispute Resolution, the Operable Unit, as defined in Section II – DEFINITIONS, shall be modified.

9.2.4 In the Site Management Plan, USACE shall include a Schedule and Milestone(s) for submitting RI/FS Work Plan(s) for the Operable Units in Appendix A, except for those Operable Units for which RI/FS Work Plans have already been submitted. When a new Operable Unit is established under Subsection 9.2.2, USACE shall, in the next draft amendment to the Site Management Plan, propose a Milestone for submitting of a RI/FS Work Plan for the new Operable Unit. When an Operable Unit is modified under Subsection 9.2.3, and RI/FS work is appropriate for the modified Operable Unit, USACE shall, in the next draft amendment to the Site Management Plan, propose a Milestone for submitting a RI/FS Work Plan for the modified Operable Unit. The RI/FS Work Plan(s) shall contain proposed Schedules and Milestone(s) for the submittal of the RI/FS Report(s). The Schedule(s) and Milestone(s) included in the Final RI/FS Work Plan(s) shall be incorporated into the Site Management Plan in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement. The development of the FS(s) will proceed in accordance with Subsection 9.2.7 of this Agreement.

9.2.5 For those Operable Units sites that the Parties determine represent a negligible or minimal risk and are strong candidates for no action, USACE shall submit a concise FS statement indicating negligible or minimal risks were found and no action is warranted. If the Parties determine that no action is required, a no-action Proposed Plan will be prepared. A

Schedule for completing a no-action Proposed Plan will be developed in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

9.2.6 USACE shall conduct RIs ~~shall be conducted~~ in accordance with the requirements and Schedules set forth in the approved RI/FS Work Plan(s) and Site Management Plan. RIs shall meet the purposes set forth in Section IV – PURPOSE, of this Agreement. A Baseline Risk Assessment shall be a component of the RIs. Final Site clean-up level criteria will only be determined following completion of the Baseline Risk Assessment.

9.2.7 USACE agrees it shall develop, implement, and report upon a FS for areas subject to a RI. The FS shall be conducted in accordance with the requirements and Schedules set forth in the Site Management Plan. The FS shall meet the purposes set forth in Section IV – PURPOSE of this Agreement.

9.3 Procedures for Interim Remedial Actions

9.3.1 USACE shall implement those Interim Remedial Actions (IRA) necessary to prevent, minimize, or eliminate risks to human health and the environment caused by the release of hazardous substances, pollutants, or contaminants. An Interim Remedial Action is identified, proposed, and implemented prior to a final Remedial Action. An IRA shall attain ARARs to the extent required by CERCLA or the NCP and be consistent with, and contribute to, the efficient performance of a final Remedial Action(s) taken at an area or Operable Unit. An IRA must be protective of human health and the environment, and comply with CERCLA, the NCP, and state of Oregon or Washington laws to the extent that they are legally applicable, or relevant and appropriate requirements in accordance with Section 121 of CERCLA, and this Agreement.

9.3.2 When a Party to this Agreement determines that an Interim Remedial Action is necessary for any area(s) within the Facility, such Party shall notify, in writing, the other Parties, of the proposal. The Proposal Notification to the other Parties under this Subsection 9.3.2 shall at a minimum include the location(s) of such area(s) within the Facility and the reason(s) the Party believes an Interim Remedial Action is required. Any Party may propose an IRA for those Operable Unit(s) most suitable for an Interim Remedial Action.

9.3.3 Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting the decision to proceed with an IRA. If a dispute(s) arises over whether to address such an area(s) under this Agreement that cannot be settled between the Parties within thirty (30) days from completion of the meeting, the dispute(s) shall be immediately brought to the Dispute Resolution Committee (DRC) pursuant to Section XX – DISPUTE RESOLUTION.

9.3.4 After the determination that an Interim Remedial Action is required under this Agreement, USACE shall, in the next draft amended Site Management Plan, submit to EPA ODEQ, and WDOE proposed Milestone(s) for the submission of Work Plan(s) for the performance of a Focused Feasibility Study (FFS) for the identified area(s). The Milestone(s) will be finalized in accordance with Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. The Schedule and Milestone(s) included in the approved, final FFS Work Plan will immediately be incorporated in the Site Management Plan. The FFS shall

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include a limited number of proposed Interim Remedial Action alternatives. To the extent possible, the FFS shall provide an assessment of the degree to which these alternatives were analyzed during their development and screening. USACE shall develop, implement, and report upon each FFS in accordance with the requirements set forth in the final FFS Work Plan. USACE shall follow the steps outlined in Subsections 9.4.2 through 9.7.4 below.

9.4 Records of Decision and Plans for Remedial Action

9.4.1 This Subsection 9.4 shall apply to selection of remedial actions and any disputes relating thereto.

9.4.2 Within forty-five (45) days after finalization of a RI/FS or FFS, USACE shall submit a draft Proposed Plan to EPA, ODEQ, and WDOE for review and comment as described in Section X – CONSULTATION. Within fourteen (14) days after receiving EPA's acceptance and ODEQ's and WDOE's comments on the Proposed Plan, USACE shall publish its Proposed Plan for thirty (30) days of public review and comment. During the public comment period, USACE shall make the Proposed Plan and supporting analysis and information available to the public in the Administrative Record. USACE shall hold a public information meeting during the public comment period to discuss the preferred alternative for each Remedial Action. Copies of all written and oral public comments received will be provided to the Parties. Public review and comment shall be conducted in accordance with Section 117(a) of CERCLA, 42 U.S.C. Section 9617(a), and applicable EPA and States Guidance.

Commented [A5]: Many of the time requirements for large documents appear to be short.

9.4.3 Following public comment, USACE, in consultation with EPA, ~~and~~ ODEQ, ~~and~~ WDOE, will determine if the Proposed Plan should be modified based on the comments received. These modifications will be made by the ~~Amy~~ USACE and the modified documents will be provided to EPA, ~~and~~ ODEQ, ~~and~~ WDOE for review. The Parties may recommend that additional public comment be solicited if modifications to the Proposed Plan substantially change the remedy originally proposed to the public. The determination concerning whether a Proposed Plan should be modified or whether additional public comment is necessary is subject to the dispute resolution provisions of this Agreement, Section XX – DISPUTE RESOLUTION.

9.4.4 USACE shall submit its draft ROD to EPA, ODEQ, and WDOE within forty-five (45) days following the close of the public comment period, including any extensions, on the Proposed Plan. The draft ROD will include a Responsiveness Summary, in accordance with applicable EPA Guidance. Pursuant to CERCLA Section 120(e)(4)(A), 42 U.S.C. Section 9620(e)(4)(A), EPA and USACE, in consultation with the States, shall make the final selection of the remedial action(s).

9.4.5 The selection of a remedy that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation is one basis on which the States may determine not to concur with a final remedial action plan. In accordance with CERCLA Section 121(f)(3)(A), 42 U.S.C. Section 9621(f)(3)(A), at least thirty (30) days prior to the publication of USACE's final remedial action plan, if USACE proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation, USACE shall provide an opportunity for the States to concur or not concur in the

selection of such plan. If the States concur or do not act within thirty (30) days of receipt of notification by USACE of pending publication of the final remedial action plan, the remedial action may proceed. If the States do not concur, it may act pursuant to Section 121(f)(3)(B) of CERCLA, 42 U.S.C. Section 9621(f)(3)(B).

9.4.6 If EPA and USACE are unable to reach agreement on the selection of the remedy, after exhausting the Dispute Resolution process set forth in Section XX – DISPUTE RESOLUTION, then the EPA Administrator shall select the remedy in accordance with all applicable laws and procedures.

9.4.7 Notice of the final ROD shall be published by the Party preparing it and shall be made available to the public prior to commencement of the remedial action, in accordance with Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b). The final ROD shall include a statement that the States have concurred or not concurred with the selection of the remedy.

9.5 Remedial Design and Remedial Action

9.5.1 The Site Management Plan shall include a Target Date for submission of a preliminary/conceptual Remedial Design (RD) (30 percent design report); a Target Date for submission of the 90 percent or pre-final Remedial Design; and a Deadline for the final Remedial Design. All design documents shall be prepared in accordance with this Agreement and applicable Guidance issued by EPA including *Principles and Procedures for Specifying Monitoring and Enforcement of Land Use Controls and Other Post-ROD Actions (as amended)*.

9.5.1.1 The RD shall provide the appropriate plans and specifications describing the intended remedial construction and shall include provisions necessary to ensure that the remedial action will achieve ARARs and performance standards identified in the ROD.

9.5.1.2 The RD shall describe short and long-term implementation actions, and responsibilities for the actions, to ensure long-term viability of the remedy, which may include both Land Use Controls and an engineered portion (e.g., landfill caps, treatment systems) of the remedy. The term “implementation actions” includes all actions to implement, operate, maintain, and enforce the remedy.

9.5.2 The Remedial Action (RA) Work Plan(s) shall at a minimum contain a Schedule for the completion of the Remedial Action, a Health and Safety Plan, a Sampling and Analysis Plan, and a Quality Assurance Project Plan, Remedial Action Specifications, Erosion Control and Sedimentation Plan, Decontamination Plan, Remedial Action Contingency Plan, and provisions for operation and maintenance, if necessary. The Schedule contained in the final RA Work Plan(s) will be immediately incorporated in the Site Management Plan.

9.5.3 After the final design document is approved, pursuant to Section X – CONSULTATION, USACE shall begin performance of the Remedial Action in accordance with the ROD, final Remedial Design, and the RA Work Plan. The Remedial Action shall be completed in accordance with the ROD, approved final Remedial Design and RA Work Plan and all applicable EPA and State Guidance.

9.5.4 Following completion of remedial action at each Operable Unit (OU) and in accordance with the Schedule in the Site Management Plan, USACE shall prepare and submit to EPA, ODEQ, and WDOE a Remedial Action Completion Report (RACR) to show that remedial action objectives for an OU have been achieved. The RACR shall provide an explanation for any activities that were not conducted in accordance with the final Remedial Design and/or RA Work Plan(s). In addition, for long-term remedies where it is anticipated that remedial action objectives will be achieved over a long period, USACE shall submit to EPA, ODEQ, and WDOE, according to the Schedule in the Site Management Plan, a RACR which shall document that physical construction is complete and the unit is operating as designed. The RACR(s) shall be prepared in accordance with this Agreement and the DoD and EPA Joint Guidance for Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities (2006).

9.6 Accelerated Operable Unit

9.6.1 Accelerated Operable Units (AOUs), as defined in Section II – DEFINITIONS, will follow a streamlined remedial process as set forth below. Any Party may propose in writing that an Operable Unit (OU) be conducted as an AOU. The Party proposing an AOU shall be responsible for drafting an AOU proposal, which shall clearly define the purpose, scope, and goals of the AOU. USACE shall evaluate all proposed AOUs.

Commented [A6]: DEQ recommends several of the AOPCs be included as AOUs to obtain source control as soon as possible at this site, considering stormwater (Sandblast Area) and/or bulk waste (Landfill and Bulb Slope bank erosional areas)

9.6.2 Within thirty (30) days of notification, any Party may request a meeting of the Parties to assist in expediting selection of an AOU. If dispute resolution is not invoked within thirty (30) days following receipt of a proposal for an AOU by the Parties, or thirty (30) days after the meeting, or if the need for an AOU is established through Section XX – DISPUTE RESOLUTION, the proposed AOU shall be incorporated into the Site Management Plan as an AOU. USACE agrees to pursue additional funding within ten (10) days of establishment of the AOU in order to initiate the AOU.

9.6.3 Within fifteen (15) days after the determination that an AOU is required under this Agreement, USACE shall submit to EPA, ODEQ, and WDOE proposed Deadlines for the submission of Work Plan(s) for the performance of an AOU Focused Feasibility Study (FFS) for the identified AOU(s). Each AOU FFS Work Plan shall contain a proposed Deadline for submittal of the AOU FFS and Proposed Plan, which will be incorporated in the next Site Management Plan. USACE shall develop, implement, and report upon each AOU FFS in accordance with the requirements set forth in the final AOU FFS Work Plan. USACE shall follow the steps outlined in Subsections 9.4.2 through 9.5.4.

9.7 Supplemental Response Action

9.7.1 The Parties recognize that subsequent to finalization of a ROD, a need may arise for one or more supplemental response actions to remedy continuing or additional releases or threats of releases of hazardous substances, pollutants, or contaminants at or from the Site. If such release or threat of release may present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Section XVIII – REMOVAL AND

EMERGENCY ACTIONS. If such release or threat of release does not present an immediate threat to public health or welfare or the environment, it shall be addressed pursuant to Subsections 9.7.2 through 9.8.2.

9.7.2 A supplemental response action shall be undertaken only when:

9.7.2.1 A determination is made that:

9.7.2.1.1 As a result of the release or threat of release of a hazardous substance, pollutant, or contaminant at or from the Site, an additional response action is necessary and appropriate to ensure the protection of human health or the environment; or,

9.7.2.1.2 There is or has been a release of hazardous waste or hazardous constituents into the environment and corrective response action is necessary to protect human health or the environment; and,

9.7.2.2 Either of the following conditions is met for any determination made pursuant to Subsection 9.7.2.1, above:

9.7.2.2.1 For supplemental response actions proposed after finalization of the ROD, but prior to EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of finalization of the ROD or based upon new information received in whole or in part by EPA following finalization of the ROD; or

9.7.2.2.2 For supplemental response actions proposed after EPA Certification, the determination must be based upon conditions at the Site that were unknown at the time of EPA Certification or based upon new information received in whole or in part by EPA, ODEQ, or WDOE following EPA Certification.

9.7.3 If, subsequent to ROD signature, any Party concludes that a supplemental response action is necessary, based on the criteria set forth in Subsection 9.7.2, such Party shall promptly notify the others of its conclusion in writing. The notification shall specify the nature of the modification needed and the new information on which it is based. The Project Managers shall confer and attempt to reach consensus on the need for such an action within thirty (30) days of receiving such notification. If the Project Managers fail to reach consensus, any Party may notify the other Parties in writing within ten (10) days thereafter that it intends to invoke dispute resolution. If the Project Managers are still unable to reach consensus within fourteen (14) days of the issuance of notice invoking dispute resolution, the question of the need for the supplemental response action shall be resolved through dispute resolution.

9.7.4 If the Project Managers agree, or if it is determined through dispute resolution, that a supplemental response action is needed based on the criteria set forth in Subsection 9.7.2, USACE shall propose a Deadline for submittal of the Supplemental Work Plan(s) and a Schedule for performance of the Work there under to EPA, ODEQ, and WDOE in the next draft amended SMP.

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9.7.5 After finalization of a Supplemental Work Plan, USACE shall conduct a Supplemental Response Action RI/FS. Following finalization of the Supplemental Response Action RI/FS, the procedures described in Subsections 9.4 and 9.5 shall be followed.

9.8 Construction Completion and Site Completion.

9.8.1 Construction Completion. USACE agrees that it shall provide written notice to EPA, ODEQ, and WDOE when physical construction of all remedial actions for all Operable Units is complete and will incorporate in the notice reference to the supporting RACRs.

9.8.2 Site Completion. Following completion of remedial action at the last Operable Unit and in accordance with the Schedule in the Site Management Plan, USACE shall prepare and submit to EPA, ODEQ, and WDOE a Remedial Action Completion Report (RACR) to show that remedial action objectives for all OUs have been achieved. The RACR shall provide an explanation for any activities that were not conducted in accordance with the final Remedial Design and/or RA Work Plan(s). The information provided therein shall document compliance with statutory requirements and provide a consolidated record of all remedial activities for all OUs at the Site in accordance with the DoD and EPA Joint Guidance, Recommended Streamlined Site Closeout and NPL Deletion Process for DoD Facilities. In order for the Site to be eligible for completion, the following criteria must be met:

9.8.2.1 Remedial Action Objectives specified in all RODs have been met, and all cleanup actions and other measures identified in the RODs have been successfully implemented;

9.8.2.2 The constructed remedies are operational and performing according to engineering specifications;

9.8.2.3 The Site is protective of human health and the environment;

9.8.2.4 Land use controls are in place as appropriate; and

9.8.2.5 The only remaining activities, if any, at the Site are long term management activities (which may include long-term monitoring).

9.8.3. Information provided for remedial action completion shall be signed by USACE's signatory authority or designee, certifying that remedial activities have been completed in full satisfaction of the requirements of this Agreement, and shall include a request for EPA certification of remedial action completion at the Site. Within ninety (90) days of EPA's receipt of USACE's request for certification of Site completion, EPA, in consultation with ODEQ and WDOE, shall:

9.8.3.1 Certify that all response actions have been completed at the Site in accordance with CERCLA, the NCP and this Agreement, based on conditions known at the time of certification; or

9.8.3.2 Deny USACE's request for certification of Site completion, stating the basis of its denial from the standards identified in 9.8.2 and detailing the additional Work needed for completion and certification.

9.8.3.3 If EPA, in consultation with ODEQ and WDOE, denies USACE's request for certification for Site completion in accordance with this Agreement, the Army may invoke dispute resolution in accordance with Section XX – DISPUTE RESOLUTION of this Agreement within twenty (20) days of receipt of the written denial of certification or determination that additional Work is necessary. If the denial of certification is upheld through the dispute resolution process, USACE will perform the requested additional Work.

9.8.3.4 If dispute resolution is not invoked, or if a denial of certification is upheld through dispute resolution, USACE shall, in the next draft amended Site Management Plan submitted after receipt of the written denial of certification or dispute resolution finding, propose a Deadline for the submittal of a draft Supplemental Work Plan. The draft Supplemental Work Plan shall contain a Schedule for completion of the additional Work required. This Schedule, once approved, will be incorporated in the Site Management Plan. After performing the additional Work, USACE may resubmit a request for certification to EPA as outlined in this Subsection 9.8.3. EPA, in consultation with ODEQ and WDOE, shall then grant or deny certification pursuant to the process set forth in this Subsection 9.8.3.

X. CONSULTATION

10.1 Review and Comment Process for Draft and Final Documents, Applicability

10.1.1 The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either Primary or Secondary Documents. In accordance with CERCLA Section 120 and 10 U.S.C. 2705, USACE will normally be responsible for issuing Primary and Secondary Documents to EPA, ODEQ, and WDOE. As of the Effective Date of this Agreement, all draft and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with Subsections 10.2 through 10.10 below.

10.1.2. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA, ODEQ, and WDOE in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final," to the public for review and comment as appropriate and as required by law.

10.2 General Process for RI/FS and RD/RA Documents

10.2.1 Primary Documents include those documents that are major, discrete portions of RI/FS or RD/RA activities. Primary Documents are initially issued by the ~~Army-USACE~~ in draft subject to review and comment by EPA, ~~and~~ ODEQ, ~~and~~ WDOE. Following receipt of comments on a particular draft Primary Document, USACE will respond to the comments received and issue a

Commented [A7]: Include a provision for submission of analytical chemistry data in an electric format, and a consistent electronic data deliverable to facilitate review. Also include consistent data validation rules.

draft final Primary Document subject to dispute resolution. The draft final Primary Document will become the final Primary Document upon the earlier of (i) issuance of a “no additional comment letter” by EPA, ODEQ, and WDOE, (ii) thirty days after the period established for review of a draft final primary document if dispute resolution is not invoked, or (iii) modification by decision of the dispute resolution process. No additional comment letters shall state the document is ready for inclusion in the Administrative Record.

10.2.2 Secondary Documents include those reports that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by USACE in draft, subject to review and comment by EPA, ODEQ, and WDOE. Although USACE will respond to comments received, the draft Secondary Documents may be finalized in the context of the corresponding Primary Documents. A Secondary Document may be disputed at the time the corresponding draft final Primary Document is issued.

10.3 Primary Documents

10.3.1 USACE shall complete and transmit draft reports for the following Primary Documents to EPA, ODEQ, and WDOE for review and comment in accordance with the provisions of this Section, except that the Site Management Plan shall be reviewed and commented on in accordance with Sections XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN and XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN:

- (1) RI/FS and FFS Work Plans including Sampling and Analysis Plan and Quality Assurance Project Plan (QAPP)
- (2) Remedial Investigation Reports (including Risk Assessments for human health and the environment)
- (3) FS and FFS Reports
- (4) Proposed Plans
- (5) Records of Decision
- (6) Final Remedial Designs
- (7) Remedial Action Work Plans
- (8) Remedial Action Completion Reports
- (9) the Site Management Plan and each annual amendment

10.3.2 Only the draft final Primary Documents identified above (and their amendments) shall be subject to dispute resolution. USACE shall complete and transmit draft Primary Documents in

accordance with the Schedule and Deadlines established in Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

10.3.3 Prior to the Effective Date of this Agreement, USACE has completed and transmitted the following draft Primary Documents listed below to EPA, ~~and ODEQ, and WDOE and ODEQ~~ for review and comment:

Remedial Investigations and Feasibility Studies for:

Proposed Plans for:

Records of Decision for:

10.4 Secondary Documents

10.4.1 All Secondary Documents shall be prepared in accordance with the NCP and applicable EPA Guidance. USACE shall complete and transmit drafts of the following Secondary Documents to EPA, ODEQ, and WDOE for review and comment in accordance with the provisions of this Section:

- (1) Initial Remedial Action / Data Quality Objectives
- (2) Non-Time-Critical Removal Action Plans (40 C.F.R. Section 300.415(b)(4)(ii))
- (3) Pilot/Treatability Study Work Plans
- (4) Pilot/Treatability Study Reports
- (5) Engineering Evaluation/Cost Analysis Reports
- (6) Preliminary/Conceptual Remedial Designs

- (7) Prefinal Remedial Designs
- (8) Well Closure Methods and Procedures
- (9) Removal Action Memoranda

10.4.2 Although EPA, ODEQ, and WDOE may comment on the draft reports for the Secondary Documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 10.2 hereof. Target Dates shall be established for the completion and transmission of draft Secondary Documents pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

10.5 Meetings of the Project Managers on Development of Documents

10.5.1 The Project Managers shall meet approximately every ninety (90) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site and on the Primary and Secondary Documents. Prior to preparing any draft report specified in Subsections 10.3 and 10.4 above, the Project Managers shall meet or confer by telephone or video conference to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be presented in the draft report.

Commented [A8]: Project managers, perhaps as part of a Technical Advisory Group, should meet more frequently than 90 days. Monthly meetings may be appropriate.

10.6 Identification and Determination of Potential ARARs

10.6.1 For those Primary Documents or Secondary Documents that consist of or include ARAR determinations, the Project Managers shall meet prior to the issuance of a draft report, to identify and propose, to the best of their ability, all potential ARARs pertinent to the document being addressed. ODEQ and WDOE shall identify all potential State ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121 and the NCP.

10.6.2 USACE shall consider any written interpretations of ARARs provided by ODEQ and WDOE. Draft ARAR determinations shall be prepared by USACE in accordance with CERCLA Section 121(d)(2), the NCP, and pertinent Guidance issued by EPA, that is not inconsistent with CERCLA and the NCP.

10.6.3 In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions proposed as a remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued.

10.7 Review and Comment on Draft Documents

10.7.1 USACE shall complete and transmit each draft Primary Document to EPA, ODEQ, and WDOE on or before the corresponding Deadline established for the issuance of the document.

USACE shall complete and transmit the draft Secondary Document in accordance with the Target Dates established for the issuance of such reports established pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN of this Agreement.

10.7.2 Unless the Parties mutually agree to another time-period, all draft documents, except the Site Management Plan, the prefinal Remedial Design and the final Remedial Design, shall be subject to a sixty (60) day period for review and comment. The Site Management Plan shall be reviewed and commented on in accordance with Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN or as agreed to by the Parties. The Parties recognize that time periods for review and comment on the draft Remedial Design and Remedial Action Work Plans may need to be expedited in order for USACE to satisfy the requirement of Section 120(e)(2) of CERCLA, 42 U.S.C. Section 9620(e)(2). The prefinal Remedial Design shall be subject to a forty-five (45) day period for review and comment. The final Remedial Design will be subject to a ~~two (2) thirtytwo (302) dayweek~~ period for review and comment by the Parties. If the final Remedial Design differs substantially from the prefinal Remedial Design, EPA, ~~or ODEQ, or WDOE~~ may extend the ~~two (2) thirtytwo (302) dayweek~~ review and comment period for an additional two (2) weeks by providing written notice to USACE prior to the end of the initial ~~two (2) thirtytwo (302) dayweek~~ comment period. Review of any document by EPA, ODEQ, and WDOE may concern all aspects of the document (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent Guidance or policy promulgated by EPA, and with applicable State law. Comments by EPA, ODEQ, and WDOE shall be provided with adequate specificity so that USACE may respond to the comment and, if appropriate, make changes to the draft document. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of USACE, EPA, ODEQ, or WDOE shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, EPA, ODEQ, or WDOE may extend the sixty (60) day comment period for an additional ~~twenty (20) thirtytwo (302) days~~ by written notice to USACE prior to the end of the sixty (60) day period. On or before the close of any comment period, EPA, ODEQ, and WDOE shall transmit their written comments to USACE.

Commented [A9]: More review time will likely be needed.

Commented [A10]: More review time will likely be needed.

10.7.3 The review period for documents shall not begin until the submission date specified in the Site Management Plan.

10.7.4 Representatives of USACE shall make themselves readily available to EPA and the States during the comment period for purposes of informally responding to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by USACE at the close of the comment period.

10.7.5 In commenting on a draft document that contains a proposed ARAR determination, EPA, ODEQ, or WDOE shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that EPA, ODEQ, or WDOE objects, it shall explain the basis for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

10.7.6 Following the close of the comment period for a draft document, USACE shall give full consideration to all written comments on the draft document submitted during the comment period. Within sixty (60) days of the close of the comment period on a draft Secondary Document, USACE shall transmit to EPA, ODEQ, and WDOE its written response to comments received within the comment period. Within sixty (60) days of the close of the comment period on a Draft Primary Document, USACE shall transmit to EPA, ODEQ, and WDOE a Draft Final Primary Document, which shall include USACE's response to all written comments received within the comment period. While the resulting draft final document shall be the responsibility of USACE, it shall be the product of consensus to the maximum extent possible.

10.7.7 USACE may extend the 60-day period for either responding to comments on a draft document or for issuing the draft final Primary Document for an additional twenty (20) days by providing timely notice to EPA, ODEQ, and WDOE. In appropriate circumstances, this time period may be further extended in accordance with Section XIII – EXTENSIONS.

~~10.10.8~~ Project Manager Meetings with the Yakama Nation

10.8.1 Project Managers from USACE, EPA, ODEQ, and WDOE shall meet with the representatives from the Yakama Nation every thirty (30) days, except as otherwise agreed by the Project Managers and the Yakama Nation, to coordinate, review, and discuss the progress of work being performed at the Site and on the development of the Primary and Secondary Documents. These meetings shall also include the review and discussion of data and information concerning Site management by USACE to identify and resolve technical concerns. Consistent with Section 120(f) of CERCLA, 42 U.S.C. § 9620(f), the Yakama Nation shall have the opportunity to review and comment, within a period established by the Project Managers, on all data, studies, reports, plans and other submissions which USACE provides to EPA, ODEQ and WDOE for review and comment under this Agreement. The Project Managers and Yakama Nation representatives shall provide comments consistent with their authorities and requirements of the NCP on all matters within the scope of CERCLA.

~~10.98~~ Availability of Dispute Resolution for draft final Primary Documents:

~~10.98.1~~ Dispute resolution shall be available to the Parties for draft final Primary Documents as set forth in Section XX – DISPUTE RESOLUTION.

~~10.98.2~~ When dispute resolution is invoked on a draft final Primary Document, Work may be stopped in accordance with the procedures set forth in Section XX – DISPUTE RESOLUTION.

~~10.109~~ Finalization of Documents. The draft final Primary Document shall serve as the final Primary Document if no Party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should USACE's position be sustained. If USACE's determination is not sustained in the dispute resolution process, USACE shall prepare, within not more than thirty-five (35) days, a revision of the draft final document, which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XIII – EXTENSIONS.

10.10.10 Subsequent Modification of Final Document

10.10.10.1 Following finalization of any Primary Document pursuant to Subsection 10.10.9 above, any Party to this Agreement may seek to modify the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in Subsections 10.10.10.2 and 10.10.10.3 below.

10.10.10.2 A Party may seek to modify a document after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the document was finalized) that the requested modification is necessary. A Party may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

10.10.10.3 In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a document shall be required only upon a showing that:

10.10.10.3.1 The requested modification is based on significant new information; and

10.10.10.3.2 The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

10.10.10.4 Nothing in this Subsection 10.10.10 shall alter EPA's, ODEQ's, or WDOE's ability to request the performance of additional work that was not contemplated by this Agreement. USACE's obligation to perform such work must be established by either a modification of a report or document or by amendment to this Agreement.

XI. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

11.1 This Agreement establishes a process for creating and amending the Site Management Plan (SMP). An initial SMP is attached as Appendix F to this Agreement. The SMP and each annual amendment to the SMP shall be Primary Documents. Milestones established in a SMP or established in a final amendment to a SMP remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Subsections 12.5 or 12.6. In addition, if an activity is fully funded in the current Fiscal Year, Milestones associated with the performance of Work and submittal of Primary Documents associated with such activity (even if they extend beyond the current Fiscal Year) shall be enforceable.

11.2 The SMP includes proposed actions for both CERCLA responses and actions that would otherwise be handled pursuant to RCRA corrective actions per Section VIII – STATUTORY

COMPLIANCE/RCRA-CERCLA INTEGRATION, and outlines all response activities and associated documentation to be undertaken at the Facility. The SMP incorporates all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.

11.3 Milestones in the SMP reflect the priorities agreed to by the Parties through a process of “risk, plus other factors” priority setting. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to: (a) the DoD relative risk rankings for the Site (DoD Relative Risk Site Evaluation Model for IRP sites or the DoD Munitions Response Site Prioritization Protocol for MRP sites); (b) current, planned, or potential uses of the Facility; (c) ecological impacts; (d) impacts on human health; (e) intrinsic and future value of affected resources; (f) cost effectiveness of the proposed activities; (g) environmental justice considerations; (h) regulatory requirements; and, (i) actual and anticipated funding levels. While Milestones should not be driven by budget targets, such targets should be considered when setting Milestones. Furthermore, in setting and modifying Milestones, the Parties agree to make good faith efforts to accommodate Federal Fiscal constraints, which include budget targets established by USACE.

Commented [A11]: “Risk, plus other factors” implies that impacts should have a higher priority.

11.4 The SMP and its annual amendments include:

11.4.1 A description of actions necessary to mitigate any immediate threat to human health or the environment;

11.4.2 A listing of all currently identified ~~MRP sites~~, Operable Units (including Accelerated Operable Units (AOUs)), Interim Remedial Actions, Supplemental Response Actions, and Time-Critical and Non-Time-Critical Removal Actions covered or identified pursuant to this Agreement;

11.4.3 Activities and Schedules for response actions covered by the SMP, including at a minimum:

11.4.3.1 Identification of any Primary Actions;

11.4.3.2 All Deadlines;

11.4.3.3 All Near Term Milestones;

11.4.3.4 All Out Year Milestones;

11.4.3.5 All Target dates;

11.4.3.6 Schedule for initiation of Remedial Designs, Interim Response Actions, Non-Time-Critical Removal Actions, AOUs, and any initiation of other planned response action(s) covered by this Agreement; and

11.4.3.7 All Project End Dates.

11.5 USACE shall submit amendments to the SMP on an annual basis as provided in Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN. All amendments to the SMP shall meet all of the requirements set forth in this Section.

11.6 The Milestones established in accordance with this Section and Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN remain the same unless otherwise agreed by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Subsections 12.5 and 12.6. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to: (a) the identification of significant new Site conditions at this installation; (b) reprioritization of activities under this Agreement caused by changing priorities or new site conditions elsewhere in the Army; (c) reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (d) an event of Force Majeure; (e) a delay caused by another Party's failure to meet any requirement of this Agreement; (f) a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (g) a delay caused, or that is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or Schedule; and (viii) any other event or series of events mutually agreed to by the Parties as constituting good cause.

11.7 The Deadlines established in the SMP and its amendments shall be published by EPA, ODEQ, and WDOE.

XII. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

12.1 USACE, as a Federal agency, is subject to fiscal controls, hereinafter referred to as the Future Years Defense Plan (FYDP). The planning, programming, and budgeting process, hereinafter referred to as the Program Objectives Memorandum (POM) process, is used to review total requirements for DoD programs and make appropriate adjustments within the FYDP for each program while adhering to the overall FYDP control. The Parties recognize that the POM process is a multi-year process. The Parties also agree that all Parties should be involved in the full cycle of POM activities as specified in this Agreement. Further, the Parties agree that each Party should consider the factors listed in Subsection 11.3, including Federal fiscal constraints as well as each of the other factors, in their priority-setting decisions. Initial efforts to close any gap between cleanup needs and funding availability shall be focused on the identification and implementation of cost savings.

Facility-Specific Budget Building

12.2 In order to promote effective involvement by the Parties in the POM process, the Parties will meet at the Project Manager level for the purpose of (a) reviewing the FYDP controls; (b) developing a list of requirements/Work to be performed at the Site for inclusion in the USACE POM process; and (c) participating in development of the USACE submission to the proposed President's budget, based on POM decisions for the year currently under consideration. Unless

the Parties agree to a different time frame, USACE agrees to notify the other Parties within ten (10) days of receipt, at the Project Manager level, that budget controls have been received. Unless the Parties agree to a different time frame or agree that a meeting is not necessary, the Parties will meet, at the Project Manager level, within thirty (30) days of receiving such notification to discuss the budget controls. However, this consultation must occur at least ten (10) days prior to USACE's initial budget submission to USACE Installation Management Command (IMCOM). In the event that the Project Managers cannot agree on funding levels required to perform all Work outlined in the SMP, the Parties agree to make reasonable efforts to informally resolve these disagreements, either at the immediate or secondary supervisor level; this would also include discussions, as necessary, with IMCOM. If agreement cannot be reached informally within a reasonable period of time, USACE shall resolve the disagreement, if possible, with the concurrence of all Parties, and notify each Party. If all Parties do not concur in the resolution, USACE will forward through IMCOM to USACE Headquarters its budget request with the views of the Parties not in agreement and inform USACE Headquarters of the possibility of future enforcement action should the money requested not be sufficient to perform the Work subject to disagreement. In addition, if USACE's budget submission to IMCOM relating to the terms and conditions of this Agreement does not include sufficient funds to complete all Work in the existing SMP, such budget submission shall include supplemental reports that fully disclose the Work required by the existing SMP, but not included in the budget request due to fiscal controls (e.g., a projected budget shortfall). These supplemental reports shall accompany the cleanup budget that USACE submits through its higher Headquarters levels until the budget shortfall has been satisfied. If the budget shortfall is not satisfied, the supplemental reports shall be included in USACE's budget submission to the DoD Comptroller. The Deputy Under Secretary of Defense (Installations and Environment) shall receive information copies of any supplemental reports submitted to the DoD Comptroller.

USACE Budget for Clean Up Activities

12.3 USACE shall forward to the other Parties documentation of the budget requests (and any supplemental reports) for the Site, as submitted by USACE to IMCOM, and by IMCOM to the USACE Headquarters, within 14 days after the submittal of such documentation to USACE Headquarters by IMCOM. If USACE proposes a budget request relating to the terms and conditions of this Agreement that impacts other installations, discussions with other affected EPA Regions and states regarding the proposed budget request need to take place.

Amended SMP

12.4 No later than June 15 of each year after the initial adoption of the SMP, USACE shall submit to the other Parties a draft amendment to the SMP. When formulating the draft amendment to the SMP, USACE shall consider funding circumstances (including OMB targets/guidance) and "risk plus other factors" outlined in Subsection 11.3 to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual amendment to the SMP, USACE will offer to meet with the other Parties to discuss the proposed changes. The Parties will attempt to agree on Milestones before USACE submits its annual amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed on by all the Parties. Any proposed extensions or other changes

to Milestones must be explained in a cover letter to the draft amendment to the SMP. The draft amendment to the SMP should reflect any agreements made by the Parties during the POM process outlined in this Section. Resolution of any disagreement over adjustment of Milestones pursuant to this Subsection shall be resolved pursuant to Subsection 12.5.

12.5.1 The Parties shall meet as necessary to discuss the draft amendment to the SMP. The Parties shall use the consultation process contained in Section X – CONSULTATION, except that none of the Parties will have the right to use the extension provisions provided therein and comments on the draft amendment will be due to USACE no later than 30 days after receipt by EPA and the States of the draft amendment. If EPA or either of the States provides comments and are not satisfied with the draft amendment during this comment period, the Parties shall meet to discuss the comments within 15 days of USACE's receipt of comments on the draft amendment. The draft final amendment to the SMP will be due from USACE no later than 30 days after the end of the EPA and States comment period. During this second 30-day time period, USACE will, as appropriate, make revisions and re-issue a revised draft herein referred to as the draft final amendment. To the extent that Section X – CONSULTATION contains time periods differing from these 30 day periods, this provision will control for consultation on the amendment to the SMP.

12.5.2.1 If USACE proposes, in the draft final amendment to the SMP, modifications of Milestones to which either EPA or either of the States have not agreed, those proposed modifications shall be treated as a request by USACE for an extension. Milestones may be extended during the SMP review process by following Subsections 12.4 through 12.7. All other extensions will be governed by Section XIII – EXTENSIONS. The time period for EPA to respond to the request for extension will begin on the date EPA receives the draft final amendment to the SMP, and EPA and either or both of the States shall advise USACE in writing of their respective positions on the request within thirty days. If EPA and the States approve of USACE's draft final amendment, the document shall then await finalization in accordance with Subsections 12.5.3 and 12.6. If EPA denies the request for extension, then USACE may amend the SMP in conformance with EPA and States comments or seek and obtain a determination through the dispute resolution process established in Section XX – DISPUTE RESOLUTION within 21 days of receipt of notice of denial. Within 21 days of the conclusion of the dispute resolution process, USACE shall revise and reissue, as necessary, the draft final amendment to the SMP. If EPA or either of the States initiates a formal request for a modification to the SMP to which USACE does not agree, EPA or the States may initiate dispute resolution as provided in Section XX – DISPUTE RESOLUTION with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Subsection 11.6 asserted to be present, and the facts and arguments of each of the Parties.

12.5.2.2 Notwithstanding Subsection 12.5.2.1, if USACE proposes, in the draft final amendment to the SMP, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the Record of Decision but to which EPA or either or both of the States have not agreed, those proposed modifications shall not be treated as a request by USACE for an extension, but consistent with Section XX – DISPUTE RESOLUTION, EPA or either or both of the States may initiate dispute resolution with respect to such Project End Date.

12.5.2.3 In any dispute under this Section, the time periods for the standard dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX – DISPUTE RESOLUTION shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the SEC level.

12.5.3 USACE shall finalize the draft final amendment as a final amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process. The draft final amendment to the SMP shall not become final until 21 days after USACE receives official notification of Congress's authorization and appropriation of funds if funding is sufficient to complete Work in the draft final SMP or, in the event of a funding shortfall, following the procedures in Subsection 12.6. However, upon approval of the draft final amendment or conclusion of the dispute resolution process, the Parties shall implement the SMP while awaiting official notification of Congress's authorization and appropriation.

Resolving Appropriations Shortfalls

12.6 After authorization and appropriation of funds by Congress and within 21 days after USACE has received official notification of USACE's allocation based on the current year's Environmental Restoration, Army (ER,A) Account, USACE shall determine if planned Work (as outlined in the draft final amendment to the SMP) can be accomplished with the allocated funds. (a) If the allocated funds are sufficient to complete all planned Work for that fiscal year and there are no changes required to the draft final amendment to the SMP, USACE shall immediately forward a letter to the other Parties indicating that the draft final amendment to the SMP has become the final amendment to the SMP. (b) If USACE determines within the 21-day period specified above that the allocated funds are not sufficient to accomplish the planned Work for the Site (an appropriations shortfall), USACE shall immediately notify the Parties. The Project Managers shall meet within thirty (30) days to determine if planned Work (as outlined in the draft final amendment to the SMP) can be accomplished through: 1) rescoping or rescheduling activities in a manner that does not cause previously agreed upon Near Term Milestones and Out Year Milestones to be missed; or 2) developing and implementing new cost-saving measures. If, during this thirty (30) day discussion period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriations shortfall such that Near Term Milestones, Out Year Milestones, and Project End Dates should be modified, the Parties shall discuss these changes and develop modified Milestones. Such modifications shall be based on the "Risk Plus Other Factors" prioritization process discussed in Subsection 11.3 and shall be specifically identified by USACE. USACE shall submit a new draft final amendment to the SMP to the other Parties within 30 days of the end of the 30-day discussion period. In preparing the revised draft final amendment to the SMP, USACE shall give full consideration to EPA and States input during the 30-day discussion period. If EPA and the States concur with the modifications made to the draft final amendment to the SMP, EPA and the States shall notify USACE, and the revised draft final amendment shall become the final amendment. In the case of modifications of Milestones due to appropriations shortfalls, those proposed modifications shall, for purposes of dispute resolution, be treated as a request by USACE for an extension, which request is treated as having been made on the date that EPA

receives the new draft final SMP or draft final amendment to the SMP. EPA and the States shall advise USACE in writing of their respective positions on the request within 21 days. USACE may seek and obtain a determination through the dispute resolution process established in Section XX – DISPUTE RESOLUTION. USACE may invoke dispute resolution within fourteen days of receipt of a statement of nonconcurrence with the requested extension. In any dispute concerning modifications under this Section, the Parties will submit the dispute directly to the SEC level, unless the Parties agree to utilize the standard dispute resolution process, in which case the time periods for the dispute resolution process contained in Subsections 20.2, 20.5, and 20.6 of Section XX – DISPUTE RESOLUTION shall be reduced by half in regard to such dispute. Within 21 days after the conclusion of the dispute resolution process, USACE shall revise and reissue, as necessary, the final amendment to the SMP.

12.7 It is understood by all Parties that USACE will work with representatives of the other Parties to reach consensus on the reprioritization of Work made necessary by any annual appropriations shortfalls or other circumstances as described in Section 12.6. This may also include discussions with other EPA Regions and states with installations affected by the reprioritization; the Parties may participate in any such discussions with other states.

Public Participation

12.8 In addition to any other provision for public participation contained in this Agreement, the development of the SMP, including its annual amendments, shall include participation by members of the public interested in this action. USACE must ensure that the opportunity for such public participation is timely; but this Subsection 12.8 shall not be subject to Section XXI – STIPULATED PENALTIES.

12.8.1 The Parties will meet, after seeking the views of the general public, and determine the most effective means to provide for participation by members of the public interested in this action in the POM process and the development of the SMP and its annual amendments. The “members of the public interested in this action” may be represented by inclusion of a restoration advisory board or technical review committee, if they exist for Bradford Island, or by other appropriate means.

12.8.2 USACE shall provide timely notification under Section 12.6, regarding allocation of ER,A, to the members of the public interested in this action.

12.8.3 USACE shall provide opportunity for discussion under Sections 12.2, 12.5, 12.6, and 12.7 to the members of the public interested in this action.

12.8.4 USACE shall ensure that public participation provided for in this Subsection 12.8 complies with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.

XIII. EXTENSIONS

13.1 A Schedule, Deadline, or Milestone shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by USACE shall be submitted in writing and shall specify:

13.1.1 The Deadline or Milestone that is sought to be extended;

13.1.2 The length of the extension sought;

13.1.3 The good cause(s) for the extension; and

13.1.4 Any related Deadline or Milestone that would be affected if the extension were granted.

13.2 Good cause exists for an extension when sought in regard to:

13.2.1 An event of Force Majeure;

13.2.2 A delay caused by another Party's failure to meet any requirement of this Agreement;

13.2.3 A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

13.2.4 A delay caused, or which is likely to be caused, by the grant of an extension in regard to another Deadline or Milestone; and

13.2.5 Any other event or series of events mutually agreed to by the Parties as constituting good cause.

13.3 Absent agreement of the Parties with respect to the existence of good cause, USACE may seek and obtain a determination through the dispute resolution process that good cause exists.

13.4 Within seven (7) days of receipt of a request for an extension of a Deadline or a Milestone, the other Parties shall advise the requesting Party in writing of their positions on the request. Any failure by the other Parties to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If a Party does not concur in the requested extension, it shall include in its statement of non-concurrence an explanation of the basis for its position.

13.5 If there is consensus among the Parties that the requested extension is warranted, USACE shall extend the affected Deadline or Milestone accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the Deadline or Milestone shall not be extended except in accordance with a determination resulting from the dispute resolution process.

13.6 Within seven (7) days of receipt of a statement of non-concurrence with the requested extension, USACE may invoke dispute resolution.

13.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected Deadline or Milestone until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original Deadline or Milestone. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the Deadline or Milestone as most recently extended.

XIV. PROJECT MANAGERS

14.1 On or before the Effective Date of this Agreement, EPA, ODEQ, WDOE, and USACE, shall each designate a Project Manager and notify the other Parties of the name and address of its Project Manager. The Project Managers shall be responsible for assuring proper implementation of all Work performed under the terms of the Agreement. To the maximum extent practicable, communications between USACE, EPA, ODEQ, and WDOE on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The Parties may designate an Alternate Project Manager to exercise the authority of the Project Manager in his or her absence.

14.2 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties, in writing, within five (5) days of the change and prior to the new Project Manager exercising his or her delegated authority.

14.3 The Parties' Project Managers shall meet or confer informally as necessary as provided in Section X – CONSULTATION. Although USACE has ultimate responsibility for meeting its respective Deadlines, EPA, ODEQ, and WDOE Project Managers shall endeavor to assist in this effort by scheduling meetings to review documents and reports, overseeing the performance of environmental monitoring at the Site, reviewing RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least seven (7) days prior to each scheduled ninety (90) day meeting, USACE will provide to EPA, ODEQ, and WDOE Project Managers a draft agenda and summary of the status of the Work.

Commented [A12]: WA AGO: need to be more frequent. Every 30 or 45 days? Need to discuss with ODEQ.

14.3.1 These status reports shall include, at a minimum, when applicable:

14.3.1.1 Identification of all data received and not previously provided by USACE during the reporting period consistent with the limitations of Subsection 32.1;

14.3.1.2 All activities completed pursuant to this Agreement since the last Project Manager meeting as well as such actions and plans that are scheduled for the upcoming ninety (90) days, ~~and~~

14.3.1.3 A description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation or problems that arise in the execution of a Work Plan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

14.3.2 The minutes of each Project Manager meeting will be prepared by USACE and will be sent to all Project Managers within twenty-one (21) days after the meeting. Any documents requested during the meeting will be provided in a timely manner, except for those documents for which express notification is required.

14.4 Necessary and appropriate adjustments to a Deadline, Target Date, or Milestone may be proposed by any Party. The Party that requested the modification shall prepare a written memorandum detailing the modification and the reasons therefore and shall provide a transmittal in a timely manner prior to the Deadline, Target Date, or Milestone to the other Parties for signature and return.

14.5 A Project Manager may also recommend and request minor field modifications to the Work performed pursuant to this Agreement, or in techniques, procedures or designs used in carrying out this Agreement. The minor field modifications proposed under this Part must be approved orally by all the Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the USACE Contracting Officer. If agreement cannot be reached on the proposed additional work or modification to Work, dispute resolution as set forth in Section XX – DISPUTE RESOLUTION, shall be invoked by USACE, by submitting a written statement to the other Parties in accordance with Section XX – DISPUTE RESOLUTION. If all Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a written transmittal detailing the modification and the reasons therefore and shall provide the transmittal to the Project Managers of the other Parties for signature and return.

14.6 Modifications of Work not provided for in Subsections 14.4 and 14.5 of this Section must be approved orally by all the Parties' Project Managers to be effective. No such Work modifications can be so implemented if an increase in contract cost will result without the authorization of the USACE Contracting Officer. If agreement cannot be reached on the proposed modification to Work, dispute resolution as set forth in Section XX – DISPUTE RESOLUTION, shall be used. If the Parties agree to the modification, within five (5) business days following a modification made pursuant to this Section, the Project Manager who requested the modification shall prepare a transmittal detailing the modification and the reasons therefore and shall provide the transmittal to the Project Managers of the other Parties for signature and return.

14.7 Each Party's Project Manager shall be responsible for ensuring that all communications received from the other Project Managers are appropriately disseminated to and processed by the Party that each represents.

14.8 The Parties shall transmit Primary and Secondary Documents and all notices required herein by next day mail, hand delivery, electronic transmittal, or certified letter to the persons specified in Subsection 14.9 below by the Deadline established under Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN. Time limitations shall commence upon receipt. USACE shall provide to EPA a maximum of two (2) hard-copies and to ODEQ and

Commented [A13]: DEQ will be satisfied with one copy.

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WDOE a maximum of two (2) copies of each Primary and Secondary Document, in addition to a CD-ROM disk version of each document for all Parties.

14.9 Notice to the individual Parties shall be provided under this Agreement to the following addresses:

14.9.1 For USACE:

Commented [A14]: Include email addresses and telephone numbers. There should be a way to track changes in project managers.

14.9.2 For EPA: U. S. Environmental Protection Agency
Attn: Bradford Island Remedial Project Manager
Superfund and Emergency Management Division
1200 Sixth Avenue
Seattle, Washington 98101

14.9.3 For ODEQ: Oregon Department of Environmental Quality
Attn: Bradford Island Project Manager
Northwest Region Cleanup Program
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

14.9.4 For WDOE: Washington Department of Ecology
Attn: Andrew Smith, PE
Bradford Island Project Manager
300 Desmond Drive
Lacey, WA 98503

14.10 Nothing in this Section shall be construed to interfere with or alter the internal organization or procedures of a Party, including, without limitation, signature authority.

14.11 The USACE Project Manager shall represent USACE with regard to the day-to-day field activities at the Site. The USACE Project Manager or other designated representative shall be physically present at the Site or available to observe Work during implementation of all the Work performed at the Site pursuant to this Agreement. The absence of the EPA, ODEQ, or WDOE Project Manager from the Site shall not be cause for Work stoppage or delay, unless the Project Managers agree otherwise in writing.

14.12 The authority of the Project Managers shall include, but not be limited to:

14.12.1 Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final Work Plans, and Quality Assurance / Quality Control (QA/QC) Plan;

14.12.2 Observing, taking photographs, and making such other reports on the progress of the Work as the Project Managers deem appropriate, subject to the limitations set forth in Section XVI – ACCESS hereof;

14.12.3 Reviewing sampling data, records, files, and documents relevant to the Agreement, subject to the limitations set forth in Section XXXI - RECORD PRESERVATION; and

14.12.4 Determining the form and specific content of the Project Managers meetings.

14.13 If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a Force Majeure event, any Party shall notify by telephone or email the other Parties' Project Managers within three (3) business days of when the Party first became aware that the event might cause a delay. If the Party intends to seek an extension of a Deadline or Schedule because of the event, the procedures of Section XIII – EXTENSIONS, shall apply.

XV. EXEMPTIONS

15.1 The Parties recognize that the President may issue an order, as needed to protect national security interests, regarding response actions at Bradford Island, pursuant to Section 120(j) of CERCLA, 42 U.S.C. Section 9620(j). Such an order may exempt Bradford Island or any portion thereof from the requirements of CERCLA for a period of time not to exceed one (1) year after the issuance of that order. This order may be renewed. USACE shall obtain access to and perform all actions required by this Agreement within all areas inside those portions of Bradford Island, which are not the subject of or subject to any such order issued by the President.

15.2 ODEQ and WDOE reserve any statutory right they may have to challenge any order or exemption specified in Subsection 15.1 relieving USACE of its obligation to comply with this Agreement.

XVI. ACCESS

16.1 EPA, ODEQ, and WDOE and/or their representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with provisions of this Agreement. Such authority shall include, but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Agreement; reviewing and monitoring the progress of USACE, and its contractors, in carrying out the activities under this Agreement; conducting, with prior notice to USACE, tests that EPA, ODEQ, or WDOE deem necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or

information submitted to EPA, ODEQ and WDOE. USACE shall honor all reasonable requests for access to the Site made by EPA, ODEQ, or WDOE upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of EPA, ODEQ, or WDOE. The USACE Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for installation passes, and coordinate any other access requests, which arise. USACE shall use its best efforts to ensure that conformance with the requirements of this Subsection 16.1 do not delay access.

16.2 The rights granted in Subsections 16.1 and 16.4 to EPA, ODEQ, and WDOE regarding access shall be subject to regulations and statutes, including Bradford Island security regulations, as may be necessary to protect national security information ("classified information") as defined in Executive Order 12958, as amended, and comply with Bradford Island's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder EPA, ODEQ, or WDOE from carrying out their responsibilities and authority pursuant to this Agreement.

16.3 USACE shall provide an escort whenever EPA, ODEQ, or WDOE requires access to restricted areas of Bradford Island for purposes consistent with the provisions of this Agreement. EPA, ODEQ, and WDOE shall provide reasonable notice to the USACE Project Manager, or his or her designee, to request any necessary escorts for such restricted areas. USACE shall not require an escort to any area of this Site unless it is a restricted, controlled-access area. Upon request of EPA, ODEQ, or WDOE, USACE shall promptly provide a written list of current restricted or controlled-access areas.

16.4 EPA, ODEQ, and WDOE shall have the right to enter all areas of the Site that are entered by contractors performing Work under this Agreement.

16.5 Upon a denial of any aspect of access, USACE shall provide an immediate explanation of the reason for the denial, including reference to the applicable regulations, and upon request, a copy of such regulations. Within forty-eight (48) hours, USACE shall provide a written explanation for the denial. To the extent possible, USACE shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

16.6 USACE shall ensure that all response measures, ground water rehabilitation measures, and remedial actions of any kind that are undertaken pursuant to this Agreement on any areas that: a) are presently owned by the United States and which are occupied by USACE or leased by USACE to any other entity; or b) are in any manner under the control of USACE or any lessees or agents of USACE, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

16.7 Nothing herein shall be construed as limiting EPA's, ODEQ's, or WDOE's statutory authority for access or information gathering.

XVII. PERMITS

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17.1 USACE shall be responsible for obtaining all Federal, state, and local permits, which are necessary for the performance of all Work under this Agreement.

17.2 The Parties recognize that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. Sections 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely onsite, where such response actions are selected and carried out in accordance with CERCLA, are exempt from the procedural requirement to obtain Federal, state, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate Federal and state standards, requirements, criteria, or limitations, which would have been included in any such permit.

17.3 When USACE proposes a response action, other than an emergency removal action, to be conducted entirely onsite, which in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), and the NCP would require a Federal, state or local permit, USACE shall include in its Draft ROD or removal memorandum:

17.3.1 Identification of each permit that would otherwise be required;

17.3.2 Identification of the standards, requirements, criteria, or limitations that would need to be met to obtain each such permit; and

17.3.3 An explanation of how the response action proposed will meet the standards, requirements, criteria, or limitations identified immediately above.

17.4 Subsection 17.2 above is not intended to relieve USACE from the requirement(s) of obtaining a permit whenever it proposes a response action involving the shipment or movement of a hazardous substance, pollutant, or contaminant or hazardous waste off the Site or in any other circumstances where the exemption provided for at Section 121(e)(1) of CERCLA, 42 U.S.C. Section 9621(e)(1), does not apply.

17.5 USACE shall notify EPA, ODEQ, and WDOE in writing of any permits required for any off-site activities it plans to undertake as soon as it becomes aware of the requirement. USACE shall apply for all such permits and provide EPA, ODEQ, and WDOE with copies of all such permits, applications, and other documents related to the permit process and final permits.

17.6 USACE agrees to notify EPA, ODEQ, and WDOE of its intention to propose modifications to this Agreement to obtain conformance with the permit, or lack thereof if a permit or other authorization that is necessary for implementation of this Agreement is not issued or is issued or renewed in a manner that is materially inconsistent with the requirements of this Agreement. Notification by USACE of its intent to propose modifications shall be submitted within sixty (60) days of receipt by USACE of notification that: (a) a permit will not be issued; (b) a permit has been issued or reissued; or (c) a final determination with respect to any appeal related to the issuance of a permit has been entered. Within sixty (60) days from the date it submits its notice of intention to propose modifications to this Agreement, USACE shall submit to EPA, ODEQ, and WDOE its proposed modifications to this Agreement with an explanation of its reasons in support thereof.

17.7 EPA, ODEQ, and WDOE shall review USACE's proposed modifications to this Agreement in accordance with Section XXXVII – AMENDMENT OF AGREEMENT. If USACE submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, EPA, ODEQ, and WDOE may elect to delay review of the proposed modifications until after such final determination is entered.

17.8 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s) to the permit, USACE shall continue to implement those portions of this Agreement, which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to Work that cannot be so implemented, any corresponding Deadline, timetable, or Schedule shall be subject to Section XIII – EXTENSIONS.

17.9 Nothing in this Agreement shall be construed to affect USACE's obligation to comply with any RCRA permit(s) that the Facility may already have or will be issued in the future.

XVIII. REMOVAL AND EMERGENCY ACTIONS

18.1 USACE shall provide EPA, ODEQ, and WDOE with timely notice of any proposed removal action.

18.2 Nothing in this Agreement shall alter USACE's, ODEQ's, WDOE's, or EPA's authority with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604.

18.3 If during the course of performing the activities required under this Agreement, any Party identifies an actual or a substantial threat of a release of any hazardous substance, pollutant, or contaminant at or from the Site, that Party may propose that USACE undertake removal actions to abate the danger and threat that may be posed by such actual or threatened release. All removal actions conducted at Bradford Island shall be conducted in a manner consistent with this Agreement, CERCLA, Executive Order 12580, DERP, including provisions for timely notification and consultation with EPA and the appropriate ODEQ, WDOE and local officials, and the NCP and shall, to the extent practicable, contribute to the efficient performance of any long-term remedial action with respect to the release(s) or threatened release(s) concerned. Prior to determining to undertake such actions, USACE shall submit to EPA for review, and to ODEQ, and WDOE for review and approval:

18.3.1 Documentation of the actual or threatened release at or from the Site;

18.3.2 Documentation that demonstrates that the actions proposed will abate the danger and threat that may be posed by release of hazardous substances, pollutants, or contaminants at or from the Site;

18.3.3 Documentation that demonstrates that the action is consistent with the NCP, applicable States regulations, and, to the extent practicable, contributes to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned;

18.3.4 ~~Prepare an~~ An Engineering Evaluation/Cost Analysis (EE/CA), or its equivalent for a removal action whenever a planning period of at least six months exists before on-site activities must be initiated (Non-Time Critical Removal Action). The EE/CA shall contain an analysis of removal alternatives for a site. The screening of alternatives shall be based on criteria as provided in CERCLA and the NCP, such as cost, feasibility, and effectiveness; ~~and~~

18.3.5 A Non-Time-Critical Removal Action Plan and Target Date for the proposed action; ~~and~~

18.3.6 EPA, ODEQ, and WDOE shall expedite all reviews of these proposals to the maximum extent practicable.

18.4 The opportunity for review and comment for proposed removal actions, as stated in Subsection 18.3 above, may not apply if the action is in the nature of an emergency removal taken because a release or threatened release may present an imminent and substantial endangerment to human health or the environment. USACE may determine that review and comment, as stated in Subsection 18.3 above, is impractical. However, in the case of an emergency removal action, USACE shall provide EPA, ODEQ, and WDOE with oral notice as soon as possible. A written notice shall be transmitted to all the Parties within forty-eight (48) hours after USACE determines that an emergency removal is necessary, which will include any deviations from the oral notice. Within seven (7) days after initiating an emergency removal action, USACE shall provide EPA, ODEQ, and WDOE with the written basis (factual, technical and scientific) for such action and any available documents supporting such action. Upon completion of an emergency removal action, USACE shall state whether, and to what extent, the emergency removal action varied from the description of the action in the written notice provided pursuant to this Section. Within sixty (60) days of completion of an emergency response action, USACE will furnish EPA, ODEQ, and WDOE with a Removal Action Memorandum addressing the information provided in the written notification, whether and to what extent the action varied from the description previously provided, and any other information required by CERCLA or the NCP, and in accordance with EPA Guidance for such actions. Such emergency removal actions may be conducted at any time~~anytime~~, either before or after the issuance of a ROD.

Commented [A15]: WA AGO: when and where will this be stated. Would it be in the Removal Action Memorandum?

18.5 If an imminent health hazard or an activity conducted pursuant to this Agreement that is creating a danger to the public health or welfare or the environment is discovered by any Party, the discovering Party will notify the other Parties and USACE will take immediate action to promptly notify all appropriate State and local agencies, potentially affected persons, and officials in accordance with 10 U.S.C. Section 2705(a). USACE will expeditiously take appropriate measures to eliminate the imminent health hazard and protect all persons affected.

18.6 All activities pursuant to this Agreement will be performed in accordance with the Health and Safety Plan and will be conducted so as to minimize the threat to the surrounding public.

XIX. PERIODIC REVIEW

19.1 Consistent with Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), Section 300.430(f)(4)(ii) of the NCP, and in accordance with this Agreement, if the selected remedial action results in any hazardous substance, pollutants, or contaminants remaining at the Site at levels above that allowing for unlimited use and unrestricted exposure, the Parties shall review the remedial action for each Operable Unit at least every five (5) years after the initiation of the remedial action to assure that human health and the environment are being protected by the remedial action being implemented. As part of this review, USACE shall report the findings of the review to EPA, ODEQ, and WDOE upon its completion. This report, the Periodic Review Assessment Report, shall be submitted to EPA, ODEQ, and WDOE for review and comment. Target Dates shall be established for the completion and transmission of the Periodic Review Assessment Report pursuant to Section XI – DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN.

19.2 If upon such review it is the conclusion of any of the Parties that additional action or modification of remedial action is appropriate at the Site in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. Sections 9604 or 9606, USACE shall implement such additional or modified action in accordance with Section IX – WORK TO BE PERFORMED.

19.3 Any dispute by the Parties regarding the need for or the scope of additional action or modification to a remedial action shall be resolved under Section XX – DISPUTE RESOLUTION, enforceable hereunder.

19.4 Any additional action or modification agreed upon pursuant to this Section shall be made a part of this Agreement.

19.5 EPA reserves the right to exercise any available authority to seek the performance of additional work that arises from a Periodic Review, pursuant to applicable law.

19.6 ODEQ and ~~WDPOE~~WDPE reserve the right to exercise any authority under State law to seek the performance of additional Work when it is determined that such additional Work is necessary.

19.7 The assessment and selection of any additional response actions determined necessary as a result of a Periodic Review shall be in accordance with Subsection 9.7. Except for emergency response actions, which shall be governed by Section XVIII – REMOVAL AND EMERGENCY ACTIONS, such response actions shall be implemented as a supplemental response action in accordance with Subsections 9.7.4 and 9.7.5.

XX. DISPUTE RESOLUTION

20.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. All Parties to this Agreement shall make reasonable efforts to resolve disputes informally at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

20.2 Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Section X – CONSULTATION; or (2) any action or inaction that leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

20.3 Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

20.4 The ~~Dispute Resolution Committee (DRC)~~ will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. EPA's representative on the DRC is the Superfund and Emergency Management Division Director of EPA Region 10. The ODEQ representative on the DRC is _____. The WDOE representative on the DRC is _____. USACE's designated member is _____. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to the other Parties pursuant to the procedures of Section XIV – PROJECT MANAGERS.

20.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to resolve unanimously the dispute and issue a written decision signed by all Parties. If the DRC is unable to resolve unanimously the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution within seven (7) days after the close of the 21-day resolution process.

20.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. EPA's representative on the SEC is the Regional Administrator of EPA Region 10. ODEQ's representative on the SEC is _____. WDOE's representative on the SEC is _____. USACE's representative on the SEC is _____. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Army, Director of ODEQ and Director of WDOE may, within fourteen (14) days of the Regional

Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that USACE or the Director of ODEQ or WDOE elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the party shall be deemed to have agreed with the EPA Regional Administrator's written position with respect to the dispute.

20.7 Upon elevation of a dispute to the Administrator of EPA pursuant to Subsection 20.6, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Army, Director of ODEQ, and Director of WDOE to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

20.8 The pendency of any dispute under this Section shall not affect USACE's responsibility for timely performance of the Work required by this Agreement, except that the time period for completion of Work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the Work required by this Agreement that are not affected by the dispute, shall continue to be completed in accordance with the applicable Schedule.

20.9 When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the Superfund and Emergency Management Division Director for EPA Region 10 requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. ODEQ and WDOE may request the EPA Division Director to order Work stopped for the reasons set out above. To the extent possible, the Party seeking a Work stoppage shall consult with the other Parties prior to initiating a Work stoppage request. After stoppage of Work, if a Party believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a Work stoppage to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

20.10 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, USACE shall incorporate the resolution and final determination into the appropriate plan, Schedule, or procedures and proceed to implement this Agreement according to the amended plan, Schedule, or procedures.

20.11 Resolution of a dispute pursuant to this Section constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

20.12 The States reserve the right to maintain an action under CERCLA Section 121(f)(3)(B), 42 U.S.C. Section 9621(f)(3)(B), to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation.

XXI. STIPULATED PENALTIES

21.1 In the event that USACE fails to submit a Primary Document, as listed in Section X – CONSULTATION, to EPA, ODEQ, and WDOE pursuant to the appropriate timetable or Deadlines in accordance with the requirements of this Agreement or fails to comply with a term or condition of this Agreement that relates to an interim or final remedial action, EPA may assess a stipulated penalty against USACE. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs. ODEQ, WDOE, and EPA agree that all stipulated penalties shall be shared equally.

21.2 Upon determining that USACE has failed in a manner set forth in Subsection 21.1, EPA, ODEQ, or WDOE shall so notify USACE in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, USACE shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. USACE shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

21.3 The annual reports required by CERCLA Section 120(e)(5) shall include, with respect to each final assessment of a stipulated penalty against USACE under this Agreement, each of the following:

21.3.1 The facility responsible for the failure;

21.3.2 A statement of the facts and circumstances giving rise to the failure;

21.3.3 A statement of any administrative or other corrective action taken, or a statement of why such measures were determined to be inappropriate;

21.3.4 A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

21.3.5 The total dollar amount of the stipulated penalty assessed for the particular failure.

21.4 In the event that stipulated penalties become payable by USACE under this Agreement, USACE will seek Congressional approval and authorization to pay such stipulated penalties in equal amounts to the Federal Hazardous Substances Superfund and to the (name of state of

Oregon Superfund and the appropriate Washington account. Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, the DoD. Any requirement for the payment of stipulated penalties under this Agreement shall be subject to the availability of funds, and no provision herein shall be interpreted to require the obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

21.5 In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in CERCLA Section 109.

21.6 This Section shall not affect USACE's ability to obtain an extension of a timetable, Deadline or Schedule pursuant to Section XIII – EXTENSIONS.

21.7 Nothing in this Agreement shall be construed to render any officer or employee of USACE personally liable for the payment of any stipulated penalty assessed pursuant to this Section.

XXII. FORCE MAJEURE

22.1 A Force Majeure shall mean any event arising from causes beyond the control of the Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to:

22.1.1 Acts of God;

22.1.2 Fire;

22.1.3 War;

22.1.4 Insurrection;

22.1.5 Civil disturbance;

22.1.6 Explosion;

22.1.7 Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

22.1.8 Adverse weather conditions that could not be reasonably anticipated;

22.1.9 Unusual delay in transportation;

22.1.10 Restraint by court order or order of public authority;

22.1.11 Inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than USACE;

22.1.12 Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and

22.1.13 Insufficient availability of appropriated funds, if -USACE shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXVII – FUNDING.

22.2 A Force Majeure shall also include any strike or other labor dispute, whether or not within control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

XXIII. ENFORCEABILITY

23.1 The Parties agree that:

23.1.1 Upon the Effective Date of this Agreement, any standard, regulation, condition, requirement or order that has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to CERCLA Section 310, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Sections 310(c) and 109;

23.1.2 All timetables and Deadlines associated with the RI/FS shall be enforceable by any person pursuant to CERCLA Section 310, and any violation of such timetables or Deadlines will be subject to civil penalties under CERCLA Sections 310(c) and 109;

23.1.3 All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, Deadlines or Schedules, and all Work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to CERCLA Section 310(c), and any violation of such terms or conditions will be subject to civil penalties under CERCLA Sections 310(c) and 109; and

23.1.4 Any final resolution of a dispute pursuant to Section XX – DISPUTE RESOLUTION that establishes a term, condition, timetable, Deadline or Schedule shall be enforceable by any person pursuant to CERCLA Section 310(c), and any violation of such term, condition, timetable, Deadline or Schedule will be subject to civil penalties under CERCLA Sections 310(c) and 109.

23.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or Work where review is barred by any provision of CERCLA, including CERCLA Section 113(h).

23.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights EPA, ~~WDOE, or ODEQ or the States~~ may have under CERCLA, including but not limited to any rights under Sections 113, 120, 121 and 310, 42 U.S.C. Sections 9613, 9620, 9621 and 9659, or any rights, or defenses, including sovereign immunity, ODEQ ~~and WDOE~~ may have under Federal or State law. USACE does not waive any rights it may have under CERCLA Section 120, SARA Section 211 and Executive Order 12580.

23.4 The Parties agree to exhaust their rights under Section XX – DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

23.5 The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

XXIV. OTHER CLAIMS

24.1 Subject to Section VIII – STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION, nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, State law, or other environmental statutes for any matter not specifically part of the Work performed under CERCLA, which is the subject matter of this Agreement.

24.2 Nothing in this Agreement shall constitute or be construed as a bar, or a discharge, or a release, from any claim, cause of action or demand in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the Site.

24.3 This Agreement does not constitute any decision or pre-authorization by EPA of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2) for any person, agent, contractor, or consultant acting for ~~USACE the Army~~.

24.4 EPA, ODEQ, and WDOE shall not be held as a party to any contract entered into by USACE to implement the requirements of this Agreement.

24.5 USACE shall notify the appropriate Federal and state Natural Resource Trustees of potential damages to natural resources resulting from releases or threatened releases under investigation, as required by Section 104(b)(2) of CERCLA, 42 U.S.C. Section 9604(b)(2), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, USACE is not released from any liability that it may have pursuant to any provisions of State and Federal law, including any claim for damages for destruction of, or loss of, natural resources.

24.6 This Agreement does not bar any claim for:

24.6.1 Natural resources damage assessments, or for damage to natural resources; or

24.6.2 Liability for disposal of any hazardous substances or waste material taken from the Site.

XXV. RESERVATION OF RIGHTS

25.1 Notwithstanding anything in this Agreement, EPA and either of the States may initiate any administrative, legal, or equitable remedies available to them, including requiring additional response actions by USACE in the event that: (a) conditions previously unknown or undetected by EPA or either of the States arise or are discovered at the Site; or (b) EPA or either of the States receives additional information not previously available concerning the premises that they employed in reaching this Agreement; or (c) the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or (d) EPA or either of the ~~States~~State discovers the presence of conditions on the Site that may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) USACE fails to meet any of its obligations under this Agreement; or (f) USACE fails or refuses to comply with any applicable requirements of CERCLA or RCRA or State laws or regulations; or (g) USACE, its officers, employees, contractors, or agents falsify information, reports, or data, or make a false representation or statement in a record, report, or document relating to the release of hazardous materials at the Site, and this information affects the determination of whether a remedial action is protective of human health and the environment. For purposes of this Subsection, conditions at the Site and information known to EPA and the States shall include only those conditions and information known as of the date of the relevant response action decision document.

25.2 The Parties agree to exhaust their rights under Section XX – DISPUTE RESOLUTION, prior to exercising any rights to judicial review that they may have.

25.3 The Parties, after exhausting their remedies under this Agreement, reserve any and all rights, including the right to raise or assert any defense they may have under CERCLA, or any other law, where those rights are not inconsistent with the provisions of this Agreement, CERCLA, or the NCP. This Section does not create any right that EPA and the ~~States~~State do not already have under applicable law.

XXVI. PROPERTY TRANSFER

26.1 No change or transfer of any interest in the Facility or any part thereof shall in any way alter the status or responsibility of the Parties under this Agreement. USACE agrees to give EPA, ODEQ, and WDOE sixty (60) ~~days'~~days notice prior to the sale or transfer by the United States of any title, easement, or other interest in the real property affected by this Agreement. USACE agrees to comply with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), including the Community Environmental Response Facilitation Act (CERFA), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

26.2 In accordance with Section 120(h) of CERCLA, 42 U.S.C. Section 9620(h), and 40 C.F.R. Part 373, USACE shall include notice of this Agreement in any Host/Tenant Agreement

or Memorandum of Understanding that permits any non-Bradford Island activity to function as an operator on any portion of the Site.

XXVII. FUNDING

27.1 It is the expectation of the Parties to this Agreement that all obligations of USACE arising under this Agreement will be fully funded. USACE ~~agrees to seek~~ sufficient funding through its budgetary process to fulfill its obligations under this Agreement.

Commented [A16]: WA AGO: consider using "... agrees to make all good faith efforts to obtain sufficient funding ..."

27.2 In accordance with CERCLA Section 120(e)(5)(B), 42 U.S.C. Section 9620(e)(5)(B), USACE shall submit to DoD for inclusion in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

27.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by ~~the Army~~USACE established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

27.4 If appropriated funds are not available to fulfill the ~~Army's~~USACE's obligations under this Agreement, EPA, ~~ODEQ, and WDOE and the each individual State~~ reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

27.5 Funds authorized and appropriated annually by Congress under the Environmental Restoration, ~~Army~~USACE (ER,A) appropriation in the Department of Defense Appropriations Act will be the source of funds for activities required by this Agreement consistent with 10 U.S.C. Chapter 160. However, should the ER,A appropriation be inadequate in any year to meet USACE's total implementation requirements under this Agreement, USACE will, after consulting with the other Parties and discussing the inadequacy with the members of the public interested in the action in accordance with Section XII – BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN, prioritize and allocate that year's appropriation.

XXVIII. REIMBURSEMENT OF STATES SERVICES

28.1 USACE and the States agree to use the Defense State Memorandum of Agreement (DSMOA), signed on August 31, 1990, in accordance with the Cooperative Agreements, for the reimbursement of services provided in direct support of USACE's environmental restoration activities at the Site pursuant to this Agreement.

Commented [A17]: DEQ/ACE entered into a consent decree regarding reimbursement of DEQ costs. Does ACE want to use this agreement to reimburse costs or should it be done under the consent decree and cross referenced here?

XXIX. RECOVERY OF EPA EXPENSES

29.1 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of EPA cost reimbursement for CERCLA response costs incurred by EPA. Pending such resolution, EPA reserves the rights it may have with respect to cost reimbursement.

XXX. QUALITY ASSURANCE

30.1 USACE shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection, and laboratory analysis activities. USACE has developed, in accordance with EPA Guidance, and EPA, ODEQ, and WDOE have approved, a Generic Quality Assurance Project Plan (GQAPP) that shall be used as a component of each RI, FS, RD, and RA Work Plan(s), as appropriate. If additional detail is required, the Army shall develop a site-specific Quality Assurance Project Plan. These work plans will be reviewed as Primary Documents pursuant to Section X – CONSULTATION. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance, including the Uniform Federal Policy for Quality Assurance Project Plans (March 2005).

Commented [A18]: Provide the GQAPP.

30.2 In order to provide for quality assurance and maintain quality control regarding all fieldwork and samples collected pursuant to this Agreement, USACE shall include in each QA/QC Plan submitted to EPA, ODEQ, and WDOE all protocols to be used for sampling and analysis. USACE shall also ensure that any laboratory used for analysis is a participant in a QA/QC program that is consistent with EPA Guidance.

30.3 USACE shall ensure that lab audits are conducted as appropriate and are made available to EPA, ODEQ, and WDOE upon request. USACE shall ensure that EPA, ODEQ and/or WDOE and/or their authorized representatives shall have access to all laboratories performing analyses on behalf of USACE pursuant to this Agreement.

XXXI. RECORD PRESERVATION

31.1 Despite any document retention policy to the contrary, EPA and USACE shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination or for a minimum of ten (10) years after implementation of any additional action taken pursuant to Section XIX – PERIODIC REVIEW, all records and documents in their possession that relate to actions taken pursuant to this Agreement. ODEQ and WDOE shall preserve all records and documents in its possession that relate to actions taken pursuant to this Agreement in accordance with State law and policy. After the ten (10) year period, or for ODEQ and WDOE at the expiration of their document retention period, each Party shall notify the other Parties at least forty-five (45) days prior to the proposed destruction or disposal of any such documents or records. Upon the request by any Party, the requested Party shall make available such records or copies of any such records unless withholding is authorized and determined appropriate by law. The Party withholding such records shall identify any documents withheld and the legal basis for

withholding such records. No records withheld shall be destroyed until forty-five (45) days after the final decision by the highest court or administrative body requested to review the matter.

31.2 All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding the Work performed under CERCLA, which is the subject of this Agreement.

XXXII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

32.1 Each Party shall make available to the other Parties, via electronic transmission, all the results of sampling, tests, or other data generated through the implementation of this Agreement as needed in a timely manner.

32.2 At the request of any Party, a Party shall allow the other Parties or their authorized representatives to observe fieldwork and to take split or duplicate samples of any samples collected pursuant to this Agreement. Each Party shall notify the other Parties by telephone or electronic mail not less than fourteen (14) days in advance of any scheduled sample collection activity unless otherwise agreed upon by the Parties. The Party shall provide written confirmation within three (3) days of the telephone or email notification.

32.3 If a Party's preliminary analysis of any samples, or test results, other data indicates that an imminent or substantial endangerment to human health or the environment may exist, all other Parties' Project Managers shall be immediately notified.

XXXIII. PROTECTED INFORMATION

33.1 USACE shall not withhold any physical, sampling, monitoring, or analytical data.

33.2 National Security Information:

33.2.1 Any dispute concerning EPA, ODEQ and/or WDOE access to national security information ("classified information"), as defined in Executive Order 12958, as amended, shall be resolved in accordance with Executive Order 12958, as amended, and other applicable law, including the opportunity to demonstrate that EPA, ODEQ, and/or WDOE representatives have proper clearances and a need to know, appeal to the Information Security Oversight Office, and final appeal to the National Security Council.

33.2.2 Upon receipt from EPA, ODEQ, and/or WDOE of a request to meet with the classifying officer regarding access to classified information, USACE shall, within ten (10) days of such request, notify the requesting Party of the identity of the classifying officer and the level of classification of the information sought. If the document was classified by USACE, the classifying officer and the representative of the requesting Party shall meet within twenty-one (21) days following receipt of the request. The purpose of the meeting shall be to seek a means

to accommodate the requesting Party's request for access to information without compromising national security or violating security regulations. If no resolution is reached at the meeting, USACE shall notify the requesting Party of the classifying officer's decision within fourteen (14) days following the meeting. Failure to render a timely decision shall be construed as a denial. Failure to respond is subject to dispute resolution under this Agreement.

33.2.3 Nothing in this Subsection 33.2 is intended to, or should be construed as, superseding any law, regulation, or promulgated USACE directive regarding access to, release of, or protection of national security information.

XXXIV. COMMUNITY RELATIONS

34.1 USACE has developed and is implementing a Community Relations Plan. This plan responds to the need for an interactive relationship with all interested community elements, both on and off Bradford Island, regarding environmental response activities conducted pursuant to this Agreement by USACE. Any revision or amendment to the Community Relations Plan shall be submitted to EPA, ODEQ, and WDOE for review and comment.

34.2 Except in case of an emergency requiring the release of necessary information, and except in the case of an enforcement action, any Party issuing a press release with reference to any of the Work required by this Agreement shall use its best efforts to advise the other Parties of such press release and the contents thereof upon issuance of such release.

34.3 The Parties agree to comply with all relevant EPA policy and Guidance on community relations programs and the public participation requirements of CERCLA, the NCP, and other applicable laws and regulations.

34.4 The Parties agree that Work conducted under this Agreement and any subsequent proposed remedial action alternatives and subsequent plans for remedial action at the Site arising out of this Agreement shall comply with all the Administrative Record and public participation requirements of CERCLA, including Sections 113(k) and 117, 42 U.S.C. Sections 9613(k) and 9617, the NCP, and all applicable Guidance developed and provided by EPA. This shall be achieved through implementation of the Community Relations Plan.

34.5 USACE shall establish and maintain an Administrative Record at or near Bradford Island, in accordance with CERCLA Section 113(k), 42 U.S.C. § 9613(k), Subpart I of the NCP, and applicable EPA Guidance. Before the Effective Date of this Agreement, USACE established and began maintaining copies of an Administrative Record at _____. The Administrative Record developed by USACE shall be periodically updated and a copy of the Index will be provided to EPA, ODEQ, and WDOE. USACE will provide to EPA, ODEQ, and WDOE, on request, any document in the Administrative Record.

34.6 Pursuant to 10 U.S.C. Section 2705(c), USACE has established a Technical Review Committee (TRC). The purpose of the TRC is to provide a forum for cooperation between the

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Parties, local community representatives, and natural resource trustees on actions and proposed actions at the Site. The Parties shall participate in the TRC as follows:

34.6.1 ~~The Director of Public Works,~~ Bradford Island, who shall chair the TRC;

Commented [A19]: This may not be appropriate for Bradford Island.

34.6.2 An EPA representative;

34.6.3 An ODEQ representative;

34.6.4 A WDOE representative; and

34.6.5 The USACE Project Manager(s).

The Parties shall encourage representatives from the following organizations to serve as members of the TRC:

34.6.5 The ~~Yakama Nation;~~

Commented [A20]: Should other tribes be included?

34.6.6 City of _____; ~~and~~

~~34.6.7 Bonneville Power Administration;~~

~~34.6.8 Oregon Health Authority;~~

~~34.6.9 Oregon Department of Fish and Wildlife;~~

~~34.6.109 U.S. Department of Fish and Wildlife; and~~

~~and~~

~~34.6.7110~~ _____ Local community.

34.7 The chair shall schedule semi-annual meetings of the TRC unless the Parties agree to meet more or less frequently. Bradford Island will provide semi-annual TRC Status Updates between TRC meetings. If possible, meetings shall be held in conjunction with the meetings of the Project Managers. Meetings and Status Updates of the TRC shall be for the purpose of reviewing progress under the Agreement and for the following purposes:

34.7.1 To facilitate early and continued flow of information between the community, Bradford Island, and the environmental regulatory agencies in relation to restoration actions taken by Bradford Island under the Installation Restoration Program;

34.7.2 To provide an opportunity for TRC members and the public to review and comment on actions and proposed actions under the Installation Restoration Program; and

34.7.3 To facilitate regulatory and public participation consistent with applicable laws.

34.8 Special meetings of the TRC may be held at the request of the members.

XXXV. PUBLIC COMMENT ON THIS AGREEMENT

35.1 Within fifteen (15) days after the execution of this Agreement (the date by which all Parties have signed the Agreement), EPA shall announce the availability of this Agreement to the public for their review and comment. Such public notices shall include information advising the public as to availability and location of the Administrative Record as discussed in Subsection 34.5. EPA shall accept comments from the public for forty-five (45) days after such announcement. Within twenty-one (21) days of completion of the public comment period, EPA shall transmit copies of all comments received within the comment period to the other Parties. Within thirty (30) days after the transmittal, the Parties shall review the comments and shall decide that either:

35.1.1 The Agreement shall be made effective without any modifications; or

35.1.2 The Agreement shall be modified prior to being made effective.

35.2 If the Parties agree that the Agreement shall be made effective without any modifications, and if the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the signed Agreement to the other Parties and shall notify the other Parties in writing that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt by USACE of the signed Agreement from EPA.

35.3 If the Parties agree that modifications are needed and agree upon the modifications and amend the Agreement by mutual consent within sixty (60) days after the expiration of the public comment period, EPA, ODEQ, and WDOE, in consultation with USACE, will determine whether the modified Agreement requires additional public notice and comment pursuant to any provision of CERCLA. If EPA, ODEQ, and WDOE determine that no additional notice and comment are required, and the Parties agree on the Responsiveness Summary, EPA shall transmit a copy of the modified Agreement to USACE, ODEQ, and WDOE and shall notify them in writing that the modified Agreement is effective as of the date of the notification. If the Parties amend the Agreement within the sixty (60) days and EPA, ODEQ, and WDOE determine that additional notice and comment are required, such additional notice and comment shall be provided consistent with the provisions stated in Subsection 35.1 above. If the Parties agree, after such additional notice and comment has been provided, that the modified Agreement does not require any further modification and if the Parties agree on the Responsiveness Summary, EPA shall send a copy of the mutually agreed upon modified Agreement to USACE, ODEQ, and WDOE, and shall notify them that the modified Agreement is effective. In either case, the Effective Date of the modified Agreement shall be the date of receipt by USACE from EPA of notification that the modified Agreement is effective.

35.4 In the event that the Parties cannot agree on the modifications or on the Responsiveness Summary within thirty (30) days after the EPA's transmittal of the public comments, the Parties

Bradford Island Federal Facility Agreement – WA & OR Proposal w/EPA Concurrence

agree to negotiate in good faith for an additional fifteen (15) days before invoking dispute resolution. The Parties agree to have at least one meeting during that 15-day period to attempt to reach agreement.

35.5 If, after the times provided in Subsection 35.4, the Parties have not reached agreement on:

35.5.1 Whether modifications to the Agreement are needed; or

35.5.2 What modifications to the Agreement should be made; or

35.5.3 Any language, any provisions, any Deadlines, any Work to be performed or any content of the Agreement or any Appendices to the Agreement; or

35.5.4 Whether additional public notice and comments are required; or

35.5.5 The contents of the responsiveness summary,

then the matters that are in dispute shall be resolved by the dispute resolution procedures of Section XX – DISPUTE RESOLUTION. For the purposes of this Section, the Agreement shall not be effective while the dispute resolution proceedings are underway. After these proceedings are completed, the Final Written Decision shall be provided to the Parties indicating the results of the dispute resolution proceedings. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Parties within twenty (20) days after receiving from EPA the Final Written Decision of the resolution of the matters in dispute. If ODEQ and/or WDOE withdraws, and EPA and USACE agree to proceed, the Agreement shall be effective as to EPA and USACE. Failure by a Party to provide such a written notice of withdrawal to EPA within this twenty (20) day period shall act as a waiver of the right of that Party to withdraw from the Agreement, and EPA shall thereafter send a copy of the final Agreement to each Party and shall notify each Party that the Agreement is effective. The Effective Date of the Agreement shall be the date of receipt of that letter from EPA to USACE.

35.6 At the start of the public comment period, USACE will transmit copies of this Agreement to the appropriate Federal, State, and local Natural Resource Trustees for review and comment within the time limits set forth in this Section.

35.7 Existing records maintained by USACE for Bradford Island that will be included in the Administrative Record such as reports, plans, and Schedules shall be made available by USACE for public review during the public comment period.

XXXVI. EFFECTIVE DATE

This Agreement shall be effective in its entirety among the Parties in accordance with Section XXXV – PUBLIC COMMENT ON THIS AGREEMENT.

XXXVII. AMENDMENT OF AGREEMENT

37.1 Except as provided in Section XIV – PROJECT MANAGERS, this Agreement can be amended or modified solely upon written consent of all the Parties. Such amendments or modifications shall be in writing and shall become effective on the third business day following the date on which EPA signs the amendments or modifications. The Parties may agree on a different Effective Date. As the last signing Party, EPA will provide notice to each signatory pursuant to Section XIV – PROJECT MANAGERS, of the Effective Date.

37.2 The Party initiating the amendment of this Agreement shall propose in writing the amendment for distribution and signature by the other Parties.

37.3 During the course of activities under this Agreement, the Parties anticipate that statutes, regulations, Guidance, and other rules will change. Those changed statutes, regulations, Guidance, and other rules shall be applied to the activities under this Agreement in the following manner:

37.3.1 Applicable statutes and regulations shall be applied in accordance with the statutory or regulatory language on applicability, and if applied to ongoing activities, shall be applied on the effective date provided. However, the Parties shall, to the extent practicable, apply them in such a way as to avoid as much as possible the need for repeating Work already accomplished;

37.3.2 Applicable policy or Guidance shall be applied as it exists at the time of initiation of the Work in issue; and

37.3.3 Applicable policy or Guidance that is changed after the initiation of the Work in issue or after its completion shall be applied subject to Section XX – DISPUTE RESOLUTION. The Party proposing application of such changed policy or Guidance shall have the burden of proving the appropriateness of its application. In any case, the Parties shall, to the extent practicable, apply any changed policy or Guidance in such a way as to avoid, as much as possible, the need for repeating Work already accomplished.

37.3.4 Changes in ARARs are governed by Section 300.430(f)(1)(ii)(B)(1) of the NCP, 40 C.F.R. § 300.430(f)(1)(ii)(B)(1).

XXXVIII. STATES OF OREGON AND WASHINGTON RESERVATION OF RIGHTS

38.1 Notwithstanding any other Section of this Agreement, the States shall retain any statutory right they may have to obtain judicial review of any final decision of EPA including, without limitation, any authority the States may have under CERCLA Sections 113, 121(e)(2), 121(f)(3), and 310, 42 U.S.C. Sections 9613, 9621(e)(2), 9621(f)(3), and 9659, Section 7002 of RCRA, Section XXIII – ENFORCEABILITY of this Agreement, and State law, except that the States expressly agrees to exhaust any applicable remedies provided in Section X – CONSULTATION and Section XX – DISPUTE RESOLUTION of this Agreement, prior to exercising any such rights.

38.2 Notwithstanding anything in this Agreement, the States reserve the right to initiate any administrative, legal, or equitable remedies available to it based upon: (a) USACE's failure or refusal to comply with any requirement of State laws or regulations required under this Agreement; or (b) except as provided in a ROD, past, present, or future disposal of hazardous substances or contaminants outside the boundaries of the Site; or (c) past, present, or future violations of Federal or State criminal law; or (d) violations of Federal or State law other than those addressed in this Agreement that occur during or after implementation of a RA; or (e) damages for injury to, destruction of, or loss of natural resources, and the cost of any natural resource damage assessments. The States expressly agree to exhaust any applicable remedies provided in Section X – CONSULTATION, and Section XX – DISPUTE RESOLUTION, prior to exercising any such rights.

38.3 With regard to all matters not expressly addressed by this Agreement, the States specifically reserve all rights to institute equitable, administrative, civil, and criminal actions for any past, present, or future violation of any statute, regulation, permit, or order, or for any pollution or potential pollution to the air, land, or waters of the States.

38.4 In the event that USACE's obligations under this Agreement are not fulfilled for six consecutive months, the States shall have the option of terminating all provisions of the Agreement affecting the States' rights and responsibilities, and the States may thereafter seek any appropriate relief. The States, however, expressly agree to exhaust any applicable remedies provided in Section X – CONSULTATION, and Section XX – DISPUTE RESOLUTION, prior to exercising any such rights. Thereafter, the States will provide the other Parties with ten (10) days notice of its intent to terminate. This Section does not create any right that the States do not already have under applicable law.

XXXIX. SEVERABILITY

If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such a ruling.

XL. TERMINATION AND SATISFACTION

40.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that USACE has completed its obligations under the terms of this Agreement. Following EPA Certification of all the response actions at the Site pursuant to Subsection 9.8 of Section IX – WORK TO BE PERFORMED, any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. The obligations and objectives of this Agreement shall be deemed satisfied and terminated upon receipt by USACE of written notice from EPA, with concurrence of ODEQ and WDOE, that USACE has demonstrated that all the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall provide a written statement of the basis for its denial and describe the actions necessary to grant a termination notice to the proposing Party within ninety (90) days of receipt of the proposal.

40.2 Any disputes arising from this Termination and Satisfaction process shall be resolved pursuant to the provisions of Section XX – DISPUTE RESOLUTION, of this Agreement.

40.3 Upon termination of this Agreement, USACE shall place a public notice announcing termination in two (2) local newspapers of general circulation.

40.4 This Section shall not affect the Parties' obligations pursuant to Section XIX – PERIODIC REVIEW or Section XXXI – RECORD PRESERVATION of this Agreement. In no event will this Agreement terminate prior to USACE's completion of the Work required by this Agreement.

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AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA and USACE. The State intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By

Date

U.S. Army
Army Corps of Engineers
Bradford Island

AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA and USACE. The State intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By

Date

Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA (I & E)

AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA and USACE. The State intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By

Date

Land Quality Division Administrator~~Waste Division Director~~

Waste Division Director

Oregon Department of Environmental Quality

_____ signs this Agreement only as a statement of the intentions of the State.
The State does not consider this Agreement to be a contract and, as to the State, the Agreement creates no third-party beneficiaries.

AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA and USACE. The State intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By

Date

Barry Rogowski

Program Manager

Toxics Cleanup Program Waste Division Director

Waste Division Director

Washington Department of Ecology

Mr. Rogowski signs this Agreement only as a statement of the intentions of the State. The State does not consider this Agreement to be a contract and, as to the State, the Agreement creates no third-party beneficiaries.

AUTHORIZED SIGNATURES

The undersigned representative certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement. This Agreement shall apply to and be binding upon EPA and USACE. The State intends to voluntarily comply with the terms of this Agreement and is committed to full participation in the remediation efforts to be conducted pursuant to this Agreement.

IT IS SO AGREED:

By

Date

Director
Superfund and Emergency Management Division
Environmental Protection Agency, Region 10

Appendix A – Initial List of Operable Units Requiring RI/FS
as of April 2022

OU#	AEDB-R#	Site Name

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Appendix B – Operable Units with Proposed Plan, Record of Decision or Completed Remedial Action
as of April 2022

OU#	AEDB-R#	Site Name	Comments

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Appendix C – ~~Sites~~Operable Units Being Addressed under Other Regulatory Programs

NCAPS#	HRS Source #	Site <u>Operable Unit</u> Name	Regulatory Program	Applicable Regulations

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*--- means site mentioned, but not numbered, in HRS documents

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*--- means site mentioned, but not numbered, in HRS documents

~~Appendix E – Initial Information on Sites Suspected to Contain UXO, DMM, or MCs
(Based on Historical Records Review (HRR) Report dated _____
and Final Site Inspection Report dated _____)~~

Site #	Site Name	Comments

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Appendix F – Initial Site Management Plan

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